1992

Brown Plumbing and Heating Co. v. Utah State Tax Commission : Brief of Petitioner

Utah Court of Appeals

Clark Snelson; Assistant Attorney General; Attorneys for Utah State Tax Commission.
Brinton R. Burbidge; Merrill F. Nelson; Blake T. Ostler; Kirton, McConkie and Poelman, Attorneys for Petitioner.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

BROWN PLUMBING & HEATING CO.,	:	
Petitioner,	:	Case No. 920402
vs.	:	Priority No. 15
UTAH STATE TAX COMMISSION,	:	
Respondent.	:	

ADDENDUM TO PETITIONER'S BRIEF

ON PETITION FOR REVIEW OF FINAL DECISION
OF THE UTAH STATE TAX COMMISSION

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Attorneys for Petitioner

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ADDENDUM

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BEFORE THE UTAH STATE TAX COMMISSION

BROWN PLUMBING & HEATING CO., Petitioner,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION
v.	)	
AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	)	Appeal No. 87-0435

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a formal hearing on July 11, 1991. Paul F. Iwasaki, Presiding Officer and R. H. Hansen, Chairman, heard the matter for and on behalf of the Commission. Present and representing the Petitioner was Blake T. Ostler, Attorney at law, of Kirton, McConkie and Poelman. Present and representing the Respondent was Clark L. Snelson and Brian Tarbet, Assistant Utah Attorneys General.

Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is sales and use tax.

2. The period in question is January 1, 1984 to December 31, 1985.

3. On June 4, 1985, Alpine School District entered into a "General Contractors Agreement" pursuant to which Paulsen/Ellsworth Construction Company was to act as the general contractor for Alpine School District for the construction of Cedar Hollow Jr. High School. The agreement required the general contractor to furnish "all labor and material, tools, implements, and equipment, scaffolding, permits, fees, etc." to build the school in accordance with the plans and specifications.

4. The agreement provided for direct purchases of construction materials by the school district by adherence to certain procedures as follows:

a. The owner (Alpine School District) could purchase certain major items and quantities of materials for utilization in the project by writing purchase orders directly to the suppliers.

b. The general contractor and its subcontractors, were required to make a list of materials and the cost for which such materials could be directly purchased.

c. The owner would then provide purchase requisitions upon which the contractor would specifically state its needs and schedules for delivery dates.

d. The purchase orders were then written by the owner from the requisitions.

e. The purchase order amount plus the sales tax amount was deducted from the total contract amount.

f. Invoices received upon receipt of delivery of materials to the project site were sent to the owner for direct payment.

g. The contractor was required to hold the owner harmless for any losses, claims, defects, discrepancy, delays in delivery or other problems relating to the materials except where the failure was attributable to negligent acts or omissions by the owner.

h. All risk of loss or damages to materials resulting from theft, vandalism or any other cause after the delivery of the materials to the project site was assumed by the contractor.

i. The contractor was required to negotiate and administer all direct purchases by the owner and to furnish to the owner a description, source of supply, trade discount information and other information necessary to enable the owner to purchase directly any materials and equipment.

j. The agreement stated that title to all such materials and equipment purchased by the owner passed from the vendor directly to the owner upon delivery to the job site.

k. After delivery, the risk of loss, damage, theft, vandalism, or destruction of or to any materials and equipment purchased directly by the owner were the responsibility of the contractor.

l. Storage of any materials and equipment furnished by the owner was the responsibility of the contractor.

m. The contractor was required to acknowledge receipt and approval of any materials or equipment purchased directly by the owner by signing the invoice for any materials or equipment.

n. The owner was to make payment for any materials or equipment within a reasonable time after the receipt of the signed invoice from the contractor.

o. The owner was not responsible for the loss of a prompt payment discount from the purchase price if the owner made payment within ten business days following the receipt of the signed invoice from the contractor by the owner.

p. The contract price was reduced by the amount actually paid by the owner for materials and equipment and by the sales tax which would have been paid on those materials and equipment had they been supplied by the contractor. Similarly, the amount of any progress payment provided for was adjusted to reflect the direct purchase of any materials and equipment by the owner.

q. The owner was not responsible for the loss of or reduction in any trade discounts available to the contractor as a result of any purchases made by the owner.

r. All bonds and insurance were to remain in full force. There was no reduction in the amount of coverage or any deduction for premiums for bonds and insurance.

s. The provisions for direct purchase by the owner of materials and equipment did not relieve the contractor of any of its duties or obligations under the contract or

constitute a waiver of the owner's right to absolute fulfillment of all the terms of the agreement.

t. The contractor was required to provide and pay for all materials and equipment not furnished by the owner and to provide and pay for labor, transportation, services, tools, machinery and all other items and services, necessary for the proper execution and completion of the work on the project.

u. If the contractor put into the work any unsatisfactory material or workmanship, the contractor was required to remove all such materials from the project.

6. Petitioner was the plumbing subcontractor after entering into an agreement with Paulsen/Ellsworth Construction Company and was required to furnish and install plumbing fixtures on the project, subject to provisions for change orders.

7. The owner, reserved the right to award separate contracts to perform work with its own forces if it so desired.

8. The General Conditions of the Contract for Construction also provided that the owner could amend the contract by change order and also subtract a contract sum from the total contract if it so desired.

9. The General Conditions provided for the owner's right to stop the work in the event of default or defalcations by the contractor.

10. The Supplementary Conditions of the Instructions to Bidders contained a statement that the title to all

materials purchased directly by the owner on its own purchase orders, passed from the vendor directly to the Alpine Board of Education upon delivery to the job site without any vesting in the contractor.

11. On February 20, 1986, Paulsen/Ellsworth Company, as general contractor, entered into a subcontract agreement with Petitioner Brown Plumbing and Heating Company.

12. Pursuant to the subcontract, the Petitioner was the prime plumbing contractor on the project.

13. The contracting documents provided for change orders.

14. Change orders were made to the subcontract for materials directly purchased by the Petitioner.

15. Pursuant to contract documents, purchase orders were issued by the school district.

16. No surplus materials from the project were retained by the Petitioner. All materials purchased by the owner and installed by the Petitioner became fixtures or a part of the junior high school building.

17. One warranty was provided to the owner by PVI Industries, Inc., for work performed by the Petitioner in relation to a water heater. The Petitioner installed the water heater as a part of the project, and the warranty covered the installation and performance of the water heater. The warranty recognized the owner as the appropriate claimant for any defects which may occur with the water heater. There were no other warranties on materials installed in the project by the Petitioner.

18. Dr. Harold Jacklin was the school district's construction supervisor and representative for the project. Dr. Jacklin is and has been an employee of the Alpine School District since 1973, and has supervised and managed other construction related projects as the school district's construction supervisor.

19. Dr. Jacklin completed an apprenticeship as a bricklayer, and is generally familiar with all phases and common methods of construction and of the interfacing relationship between architect, contractor, subcontractor and the school district.

20. Dr. Jacklin is familiar with materials that are used in construction and with materials installed on the Project.

21. Dr. Jacklin visited the project site in the company of the project architect at least weekly during the construction. He was ultimately responsible to authorize the issuance of purchase orders for construction materials on behalf of the school district. Mr. Sherm Wankier, the purchasing agent and an employee of the school district, was directly responsible to fill out purchase orders on behalf of the school district and to send them to suppliers of materials for the project.

22. After delivery, the risk of loss, damage, theft, vandalism, or destruction of or to any such materials and equipment so purchased would lie with the contractor unless the damage resulted from the owner's negligence.

23. The materials on the project were covered by the owner's insurer, Educators Insurance Company, and State Risk Management. The owner provided insurance coverage for owner purchased materials after purchase and through construction of the building.

24. If the owner decided to directly purchase materials through the above described procedure, invoices received upon delivery of materials to the project site were sent to the owner for direct payment to the vendor.

25. The change orders which were executed did not relieve the Petitioner of its duty to furnish materials, so the contract remained a furnish and install contract.

26. The owner did not actively participate in the receipt or inspection of the materials, either by or through Mr. Jacklin or any other representative.

27. The Petitioner, and not the owner, was responsible for all claims, shortages and defects in the materials, including those materials purported to have been purchased by the owner. Petitioner also warranted that all materials, including those purported to have been purchased by the owner, were and would be free of defects for a period of at least one year after acceptance of the project by the owner.

28. Even after the change orders had been made, the contract still required the Petitioner to be responsible for "furnishing of all materials and labor required for the job as described, together with all minor items implied or required to finish the entire work . . .." The contract also held

Petitioner responsible for the final result, and provided that "This contractor shall furnish and install all fixtures shown or specified hereinafter and make all parts complete and leave the entire system in perfect working order . . .. Any damaged or cracked fixtures shall be replaced at the contractors expense."

29. The risks of ownership of the materials was never on the owner, but shifted directly from the vendor to the Petitioner.

30. The Petitioner, not the owner, bore the burdens of risk. The contract provided, "The contractor shall, in all cases, hold the owner harmless for any losses, claims, defects, discrepancy, delays in delivery or other problems relating to such materials . . . . all risk of loss or damage to materials resulting from theft, vandalism or any other cause whatsoever, shall be assumed by the contractor. . .."

31. The owner reserved the right to go on the job site "to protect the Board from defects and deficiencies in the work" or even to stop or reject the work, but none of those actions by the owner acted to relieve the Petitioner from full responsibility for not only the labor and installation, but also the materials.

32. When the materials were ordered, the involvement of the owner was minimal. When the materials were received and paid for, the Petitioner was required to "acknowledge receipt and approval of any such materials or equipment directly purchased by the Board by signing the invoice for any such material or equipment." Also, Brown Plumbing & Heating was

responsible to inspect and notify the owner of receipt, conformance and quality of materials. Thus, payment for the materials was made only after authorization from Petitioner.

33. The Petitioner bore the responsibility and expense of problems with the materials purchased, such as when a boiler had a defective part and the Petitioner, not the owner, called the supplier and had the boiler repaired.

34. The Petitioner, not the owner, had the burdens and benefits of ownership, and possessed control and ownership of the materials and property.

35. Petitioner did not present any evidence that there had been any detrimental reliance upon Rule R865-19-42S.

CONCLUSIONS OF LAW

1. Sales made to the state, its institutions, and its political subdivisions are exempt from sales and use taxes. (Utah Code Ann. §59-12-104(2).)

2. Sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities are exempt from sales and use taxes. (Utah Code Ann. §59-12-104(8).)

3. Sales of tangible personal property to real property contractors and repairmen of real property are subject to sales and use taxes. (Rule R865-19-58S).

4. The person who converts personal property into real property is the consumer of the personal property since he or she is the last person to own it as personal property. (Rule R865-19-58S). Utah Concrete Products Corp. v. State Tax

Commission, 802 P.2d 408 (Utah 1942); Olson Construction Company v. State Tax Commission, 12 Utah 2d 42, 361 P.2d 1112 (Utah 1961); and Tummurru Trades, Inc. v. Utah State Tax Commission, 802 P.2d 715 (Utah 1990).

5. The contractor or repairman is the consumer of tangible personal property used to improve, alter or repair real property. (Rule R865-19-58S).

6. Sales of materials and supplies to contractors and subcontractors are taxable transactions as sales to final consumers, even if the contract is performed for a religious institution, charitable organization, or governmental instrumentality. (Rule R865-19-58S).

7. Sales of materials to religious institutions, charitable organizations, and governmental instrumentalities are exempt only if sold as tangible personal property and the direct or indirect seller does not install the material as an improvement to realty or use it to repair real property. (Rule R865-19-58S).

8. The contractor must accrue and report tax on all merchandise bought tax-free and used in performing contracts to improve or repair real property. (Rule R865-19-58S).

9. Rule R865-19-58S is the primary rule governing the sale of materials and supplies sold to owners, contractors and repairmen of real property, and it sets forth the requirements for the taxation of the sale or acquisition of tangible personal property which is to be used to improve, alter or repair real property. That rule provides in relevant part:

> A. Sale of tangible personal property to real property contractors and repairmen of real property is generally subject to tax.
>
> 1. The person who converts the personal property into real property is the consumer of the personal property since he is the last one to own it as personal property.
>
> 2. The contractor or repairman is the consumer of tangible personal property used to improve, alter or repair real property; regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.
>
> 3. The sale of real property is not subject to the tax nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors and subcontractors are taxable transactions as sales to final consumers. This is true whether the contract is performed for an individual, a religious institution, or a governmental instrumentality.
>
> 4. Sales of materials to religious or charitable institutions and government agencies are exempt only if sold as tangible personal property and the seller does not install the material as an improvement to realty or use it to repair real property.

10. Sales of materials from a vendor to a contractor or other person or entity for use in the construction, improvement, alteration or repair of real property for a governmental entity, religious institution or charitable organization is not exempt from sales and use tax. The incidents of the tax have been imposed on the contractor and not on the exempt entity. To be exempt, the sale must be from

the vendor directly to the governmental entity, religious institution or charitable organization for the use of, and consumption by, the exempt entity.

11. The fact that the burden of the tax may be passed by the contractor on to the exempt entity in the form of higher prices and is thus paid indirectly by the exempt entity does not result in tax exemption for the transaction. (Rule R865-19-58S), Utah Concrete Products Corp. v. State Tax Commission, 101 Utah 513, 125 P.2d 408 (1942), and Ford J. Twaits Co. v. Utah State Tax Commission, 106 Utah 343, 148 P.2d 343 (1944), Olsen Construction Company v. State Tax Commission, 12 U.2d 42, 361 P.2d 1112 (1961).

12. Parties seeking exemptions from the imposition of that tax bear the burden of proving that they qualify and are legally entitled to the exemption. Parson Asphalt Products v. Utah State Tax Commission, 617 P.2d 397 (1980).

13. In order for the sale to the exempt entity to be exempt from sales and use tax it must be a bona fide sale to the exempt entity acting either in the capacity as the final consumer of tangible personal property or the entity which converts the tangible personal property to real property. The sale is such a bona fide sale to an exempt entity only if either:

a. The sale of materials or supplies is to the exempt entity and the exempt entity has its own employees attach the materials and/or supplies to the realty, or

b. The sale of materials and supplies is to the exempt entity, and the exempt entity separately hires a contractor to attach the materials and/or supplies to the realty on a labor only or install only contract, or

c. The sale of materials and supplies is to an exempt entity which acts as the prime contractor by converting the tangible personal property to real property.

14. The sale of tangible personal property is not exempt from sales and use tax if the exempt entity is simply acting as the purchasing agent for the general contractor. It is not merely whether the exempt entity engages in the mechanics of a purchase, but rather the legal status of the exempt entity at the time the purchase is made, i.e., is it purchasing the property as the final consumer of the tangible personal property. If the exempt entity makes the purchase for itself and its own use, consumption, or conversion to real property, the purchase is exempt from sales and use tax. On the other hand, if the exempt entity makes the purchase for another person or entity, or for use, consumption, or conversion to real property by another person or entity, the purchase is not exempt from sales and use tax because the exempt entity has only acted in the capacity of a purchasing agent for the final consumer which is the contractor.

15. If the exempt entity enters into a furnish and install contract with a general or subcontractor which requires the general or subcontractor to furnish and install the materials and supplies, then the exempt entity is not acting as the prime contractor as to the materials and supplies required by contract to be provided by the general or subcontractor.

16. When the general or subcontractor is required by contract to provide materials and supplies and install them on real property, then the contractor is the consumer of that tangible personal property and is liable for the sales and use tax, even if an exempt entity goes through the mechanics of a purchase by issuing a purchase order and a check for payment. The contract is the controlling document, and determines who is the final consumer of tangible personal property, and thus the contract determines upon which party the incidence of taxation falls. Actions taken in noncompliance with the contract may be accepted without objection by the contractor and the exempt entity, but unless the contract is modified or changed by change order to show the consent of the contractor and the exempt entity to the modifications, the actions that are not in compliance with the contract do not shift or change the incidents of taxation. The written terms of the agreement will govern the taxability of the transaction and not the actions of the parties. This is especially so because written documents can be audited by State Tax Commission auditors, but actions, based on only after the fact statements, allegations or representations are impossible to audit.

17. For the exempt organization to be acting as the prime contractor, the exempt organization, by and through its own employees or agents must:

a. Exercise direct supervision over the construction project.

b. Issue purchase orders to the vendors for all materials and supplies for which sales tax is not paid.

c. Make direct payment to the vendors for all materials and supplies for which sales tax is not paid.

d. Have provisions in any furnish and install contracts to permit changes through change orders to make that portion of the contract a labor only or install only contract, and those contractual provisions must be fully implemented and followed during the construction process.

18. For the exempt organizations to act as the prime contractor exercising direct supervision over the construction project it is not necessary to act as the general contractor over the entire project. Instead, the exempt organization must exercise sufficient direct supervision over the purchased materials that there is a change in the legal status of which entity is responsible for those materials. Therefore, the exempt organization may be the prime contractor by exercising sufficient direct supervision over the purchased materials to be the prime contractor for a portion of the total contract. The prime contractor or direct supervision requirement may

apply to relationships within the full general contract.

19. To be the prime contractor and exercise sufficient direct supervision, the exempt organization must assume the "burdens of risk" or the "incidents of risk." This requires evidence that the exempt organization has done more than just act as a "purchasing agent" for the general contractor. If a general contractor issues a purchase order on forms of the exempt entity and then later issues authorization for payment by check to the exempt entity, there has just been the creation of a "paper trail" and the direct supervision test has not been met.

20. If the exempt organization and a general contractor enter into a furnish and install contract, the general contractor is contractually required to provide and install those materials. When the contractor provides and installs those materials the contractor is the final consumer of those materials and is required to pay sales or use tax on those materials (Rule R865-19-58S). For the exempt organization to purchase those materials and avoid sales or use tax, the furnish and install contract must contain a provision permitting change orders so the exempt organization may make such purchases, and the parties must then actually execute such change orders in advance of the purchases. The exempt organization, by its own employees or agents, must then issue purchase orders and vouchers or checks for payment, and must exercise direct supervision over the purchased materials. As evidence regarding whether or not the exempt organization

exercised direct supervision over the purchased materials, all of the relevant factors should be reviewed, including:

a. Who assumed the burdens or incidents of risk?

b. Who carried the risk of loss in the event of damage or destruction of the materials?

c. Who, if anyone, carried and paid for insurance on the materials after delivery and prior to installation or attachment to the real property?

d. Who physically inspected and counted the materials upon receipt?

e. If there was a shortage in materials upon receipt, who was required to pay for additional materials?

f. If there was an overage in materials upon receipt, who retained the surplus materials?

g. If the materials did not meet specifications or quality standards, who had the right and authority to reject those materials?

h. If materials were rejected for failure to meet quality standards or specifications, and it had resulted in a shutdown of the job, who would have been responsible for the shutdown expenses?

i. Who was responsible for enforcing any warranties on the materials?

j. To whom did recourse go if the materials were faulty or defective?

k. If materials failed after installation, who was responsible for any resulting damages including personal injuries?

l. To whom did the title pass for the purchased materials?

m. Were the bills submitted by the vendor directly to the exempt organization?

n. Did the vendors look only to the exempt organization for payment of the bill?

o. Did the general contractor or the subcontractor have to approve the bills before they were paid by the exempt organization?

p. To whom were the materials delivered, i.e., to the contractor, the exempt organization or one of its employees or agents, or directly to the job site?

21. Under a furnish and install contract, the contractor is required to furnish the materials and install those materials onto real property. Thus, the contractor is required to convert that tangible personal property into real property and the tax is imposed on that consumption of the tangible personal property by the contractor. Therefore, to avoid sales and use tax on materials used for a furnish and install contract, the contract must be modified through the execution and implementation of change orders. When those

change orders have been executed and implemented, the modified contract must make it clear that the materials in question have been separately purchased and provided by the exempt organization and that the contractor's only duty with respect to those materials is to provide the labor to install those materials.

22. For the purchases of materials and supplies to be exempt from sales and use tax, the exempt entity must make the purchase and, title to the purchased items must pass to the exempt entity prior to the time it is attached to real property. The exempt entity must deal with the purchased items as its own property and treat those items the same as it would treat items it purchases for its own use and consumption.

DECISION AND ORDER

Sales and Use Tax is imposed not only upon the sale of tangible personal property, but also upon "tangible personal property stored, used or consumed in this state." (U.C.A. 59-12-103[1]). In the construction business, when a person uses lumber, bricks, cement, steel, nails, and other materials to construct a building or other improvements to real estate, that person has used those materials and has converted the materials into real property. That conversion of tangible personal property into real property is deemed to be the consumption or use of the tangible personal property, which is the taxable event.

The Utah Supreme Court has consistently held that sales and use tax is imposed upon the party that converts

tangible personal property into real property. Utah Concrete Products Corp. v. State Tax Commission, supra, Olson Construction Co. v. State Tax Commission, supra, and Tummurru Trades, Inc. v. Utah State Tax Commission, supra. The party that makes that conversion from tangible personal property to real property has used or consumed that property, is the real property contractor, and is taxed on that property. If that conversion to real property is performed by anyone except an exempt entity, the use and consumption of the converted materials is subject to sales and use tax. If the conversion to real property is performed by an exempt entity acting as the real property contractor, the use and consumption of the converted materials is not subject to sales and use tax.

Therefore, the primary issue in this case is to determine whether the Petitioner or the owner was the real property contractor. If a preponderance of the evidence indicates that Petitioner was the party that converted the tangible personal property into real property, then Petitioner was the real property contractor and is liable for the tax assessed by the Auditing Division. However, if a preponderance of the evidence indicates that the owner was the party that converted the tangible personal property into real property then the owner was the real property contractor and was exempt from the sales and use tax.

To determine which party was the real property contractor, it is necessary to review and analyze the full scope of the contract and the legal rights, duties,

obligations, and relationships of the parties with respect to the materials converted into real property. The primary evidence available to the Commission to make that determination is the contract and agreement, together with all duly executed change orders and other written documents. Oral testimony is beneficial in interpreting the documents and gaining some insight into the conduct of the parties and, to some extent, their understanding of the requirements of the contract. However, where any inconsistencies may exist between the written contract, including executed change orders, and either the conduct or oral testimony of any person, the written contract must be presumed to govern or prevail.

In this proceeding, a preponderance of the evidence shows that the legal rights, duties and obligations of the owner did not rise to the level of the real property contractor because the owner did not assume the burdens, risks, responsibilities and incidents of ownership of the materials being converted to real property. Except for the paper work involved in the purchase order and the check for payment, the owner had only minimal involvement in the project, during the construction process. The general contractor and the subcontractors had nearly total control of and responsibility for the materials during the construction process. The Petitioner provided lists, specifications and costs of materials to be purchased, and then received, inspected and approved the materials, signed the invoices, carried bonds and insurance on the materials, negotiated and administered the purchases of materials, and was fully responsible for the

materials and any problems with the materials. The Petitioner was also required to hold the owner harmless from any problems with the materials. The Petitioner, and not the owner, assumed nearly all of the burdens, risks and incidents of ownership of those materials.

The owner did have a construction supervisor who made weekly visits to the project, but there is no evidence that he had any authority to be involved in the management of that project. It appears that his role was primarily to observe the construction progress and report back to his employer. There is no evidence that the construction supervisor had any responsibility to review or even look at the materials which the Petitioner alleges had been purchased by the school district, and there is no evidence that he was in any way involved with the materials that were converted to real property.

The owner did carry insurance on those materials, but the contractor was also required to carry insurance on those materials. The contractor and subcontractors (including Petitioner) had all other burdens, risks, responsibilities, and incidents of ownership on those materials. The Petitioner was contractually required to provide the materials for its portion of the project. Petitioner installed those materials onto the project, and acted as the owner of those materials by assuming the risks, burdens, responsibilities and incidents of ownership during the construction process. A preponderance of the evidence indicates that Petitioner converted those materials from tangible personal property into real property. Therefore,

Petitioner was the real property contractor for those materials and pursuant to Rule R865-19-58S was liable for the use tax on those materials.

Based upon the foregoing, it is the order of the Utah State Tax Commission that the Petition for Redetermination is hereby denied, and the audit assessment made by the Auditing Division is affirmed. It is so ordered.

DATED this 10th day of March, 1992.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

R. H. Hansen
Chairman

Roger O. Tew
Commissioner

Joe B. Pacheco
Commissioner

S. Blaine Willes
Commissioner

NOTICE: You have twenty (20) days after the date of the final order to file a request for reconsideration or thirty (30) days after the date of final order to file in Supreme Court a petition for judicial review. Utah Code Ann. §§63-46b-13(1), 63-46b-14(2)(a).

GBD/wj/2719w

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing Decision to the following:

Brown Plumbing & Heating Co.
c/o Blake T. Ostler
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Salt Lake City, Utah 84111

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DATED this 10th day of March, 1992.

Sara Jenson
Secretary

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Norman H. Bangerter
Governor

R. H. Hansen, Chairman
Roger O. Tew, Commissioner
Joe S. Pacheco, Commissioner
C. Blaine Davis, Commissioner

Clyde R. Nichols, Jr., Executive Director

March 12, 1987

Brown Plumbing & Htg. Co.
65 East 400 South
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In Reply Refer To:
Acct. No. H00395
Kenneth B. Cook/530-6290

STATUTORY NOTICE OF DEFICIENCY

The state Tax Commission sent you a Preliminary Notice on September 8, 1986. The twenty-five (25) day period granted in the Preliminary Notice to review our proposed sales tax deficiency has expired. Pursuant to the provisions of Utah Code Ann. §59-30-1, et seq., you have thirty (30) days from the mailing date of this letter to appeal the proposed deficiency.

The following appeal procedures are available to you:

1. You may arrange a meeting with the Auditing Division to present evidence, legal authority, and argument on an informal basis with the view of reaching mutual agreement.

2. If you attempt to resolve this matter as described above and the matter remains unresolved and you desire to pursue your appeal rights, you must file a "Petition for Redetermination" within thirty (30) days of the mailing date of this letter in order to protect your appeal rights under the law. A copy of this "Statutory Notice of Deficiency" must be attached to your "Petition for Redetermination." The Tax Commission has no authority to consider your petition if not filed within this thirty (30) day period.

3. Your "Petition for Redetermination" must be in letter form entitled "Petition for Redetermination," and must set forth the following:

   a. A concise statement identifying each error alleged to have been committed by the Tax Commission in the determination of the deficiency.

   b. A concise statement of the facts upon which you rely in support of your position.

   c. A statement of the relief you are seeking.

   d. Your signature or the signature of your counsel.

   e. A sworn verification by you stating that the contents of the petition are true and accurate.

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Unless you file a "Petition for Redetermination" as described above within the required thirty (30) days, this "Statutory Notice of Deficiency" will constitute a final assessment. If a petition is not filed or full payment is not received, your case will be referred to the Collection Division which will bill you for the unpaid tax deficiency plus penalties and updated interest.

If you file a petition, the Tax Commission shall answer it in a manner to apprise you of the nature of its defenses and the facts it relies upon for affirmative relief pursuant to Utah Code Ann. §59-30-1, et seq. If you so desire, you may file a written reply within fifteen (15) days from the receipt of the Tax Commission's answer.

In addition to the right to submit a written reply to the Tax Commission's answer, you have the right to request a hearing before the Tax Commission in order to orally present evidence, legal authority, and argument, prior to the Tax Commission's rendering of a decision on your "Petition for Redetermination." Such a hearing is not mandatory and you must affirmatively request the hearing in writing. If such request is not made, the Tax Commission will render a decision based upon the evidence and arguments before it. Your request for a hearing may be made in your "Petition for Redetermination" or in a separate document; however, if no request is received within twenty (20) days of receipt of the Tax Commission's answer to your petition, your case will be submitted to the Tax Commission for it to render a decision.

If a hearing is requested and held, the Tax Commission will render a decision based upon all evidence, oral argument, and relevant law before it. The Tax Commission will mail you a copy of its decision.

Your prompt action and response are needed in order to protect your appeal rights.

STATE TAX COMMISSION OF UTAH

James H. Rogers, CPA
Director, Auditing Division

sbs/1451J
Enclosure

NOTICE

Return a copy of this letter with your remittance or your "Petition for Redetermination" in the enclosed envelope to:

STATE TAX COMMISSION OF UTAH
Auditing Division - Mail Station 02
160 East Third South
Salt Lake City, Utah 84134

Brown Plumbing & Hgt. Co.

65 East 400 South

Orem, UT 84056

EXAMINING OFFICER: [illegible]

Bob Fenton/Jack Horsley

DATE OF REPORT: March 12, 1987

SALES AND USE TAX ASSESSMENT

AUDIT REPORT FOR THE PERIOD

January 1, 1984 through December 31, 1985

SUMMARY

REFERENCE	ADDITIONAL TAX	PENALTY	INTEREST	TOTAL
Exhibit A	$25,664.96	$0.00	$4,843.87	$30,508.83
		TOTAL AMOUNT DUE		$30,508.83

REMARKS

...ON PLUMBING & HTG. CO.

...MARY OF SALES & USE TAX AUDIT ADJUSTMENTS

EXHIBIT A

1/1/84 TO 12/31/85

	Initials	Date
Prepared By		
Approved By		

1	2	3	4	5	6	7	8	9	10
DUE	TAX AUTHORITY	RATE	TAXABLE ADJUSTMENTS (EXH. A-1)	TAX DUE	TAX PAID	ADDITIONAL TAX DUE	FROM	INTEREST @ 12% TO	AMOUNT	TOTAL AMT DUE
1/84 TO 12/31/84	OREM CITY + STATE	5½%	$ 6745700	$ 371[illegible]	-0-	$ 3[illegible]101	9-15-84	4-1-87	[illegible]	[illegible]
1/85 TO 12/31/85	OREM CITY + STATE	5¾%	$ 4490000	$ 25[illegible]	[illegible]	$ [illegible]	9-15-85	4-1-87	[illegible]	[illegible]
	TOTALS		$ 2590164	$ 23[illegible]	$ 2566496				[illegible]	[illegible]

87-C435

KIRTON, McCONKIE & BUSHNELL
A PROFESSIONAL CORPORATION

WILFORD W. KIRTON, JR.
OSCAR W. McCONKIE
DAN S. BUSHNELL
RICHARD R. BOYLE
RAYMOND W. GEE
ALLEN M. SWAN
B. LLOYD POELMAN
GRAHAM DODD
ANTHONY I. BENTLEY, JR.
J. DOUGLAS MITCHELL
RICHARD R. NESLEN
HENRY D. STAGG
MYRON L. SORENSEN
RAEBURN G. KENNARD
CARL B. PRATT
JERRY W. DEARINGER
RAYMOND L. RIDGE
DWIGHT B. WILLIAMS
BRUCE FINDLAY
CHARLES W. DAHLQUIST, II
M. KARLYNN HINMAN
ROBERT P. LUNT
BRINTON R. BURBIDGE

GREGORY S. BELL
LEE FORD HUNTER
LARRY R. WHITE
WILLIAM H. WINGO
DAVID M. McCONKIE
READ R. HELLEWELL
ROLF H. BERGER
LESTER A. PERRY
OSCAR W. McCONKIE, III
LORIN C. BARKER
DAVID M. WAHLQUIST
JAMES J. CASSITY
WALLACE O. FELSTED
NORMAN J. YOUNKER
MERRILL F. NELSON
DAVID B. ERICKSON
FRED D. ESSIG
TAD D. DRAPER
SHERENE T. DILLON
DANIEL BAY GIBBONS

ATTORNEYS AT LAW
330 SOUTH THIRD EAST
SALT LAKE CITY, UTAH 84111

TELEPHONE (801) 521-3680
TELECOPIER (801) 321-4893
TELEX 388-385 KMB LAWYERS

OF COUNSEL
HAROLD R. BOYER
DAVID P. FARNSWORTH

April 13, 1987

PETITION FOR REDETERMINATION

April 13, 1987

State Tax Commission of Utah
Auditing Division-Mail Station 02
160 East 3rd South
Salt Lake City, Utah 84134

Re: Brown Plumbing & Heating Co.
Sales/Use Tax Audit

Gentlemen:

Pursuant to the provisions of section 59-15-12, 59-16-11 and 59-30-1 of Utah Code Ann. (1953 as amended), Brown Plumbing & Heating Co. hereafter petitioner, does hereby respectfully petition the Tax Commission of the State of Utah for a redetermination of the sales and use tax deficiency which has been assessed against it pursuant to your letter of March 12, 1987, a copy of which is attached as Exhibit 1.

1. Name and Address of Petitioner

Brown Plumbing & Heating Co.
65 East 400 South
Orem, Utah 84056

2. Date of Your Letter

March 12, 1987
Acct. No. H00395
Originating Department and Officer:
Auditing - Sales Kenneth B. Cook

3. Taxable Period and Proposed Deficiency Involved

	1/1/84 to 12/31/85
Additional Tax	$25,664.96
Penalty	-0-
Interest	4,843.87
Total	$30,508.83

4. Hearing

In accordance with Tax Commission rules and procedures, an informal hearing before the Tax Commission on this Petition for Redetermination is requested.

5. Summary of the Case

This case concerns the question of who purchased certain plumbing materials from third-party vendors, which were utilized in the construction of school district facilities.

The Tax Commission, through its auditors and internal review personnel, has taken the position that these materials were purchased by petitioner and that petitioner remained the owner of such materials until they were incorporated into such projects and that therefore petitioner was the consumer of such materials and is required to pay sales/use tax as set forth in the first part of sales tax regulation S58.a.

Petitioner, by and through its counsel, has taken the position that these materials were purchased by Alpine School District for its own account and that petitioner acted if at all in relation thereto solely as Alpine School District's agent and has never acquired any ownership interest therein and that therefore petitioner was not the consumer of such materials and is not liable for any sales/use tax thereon.

6. Assignment of Errors

The Tax Commission committed factual error in failing to recognize or properly account for the fact that the purchases of building materials which the Commission attributed to petitioner in its audit report were not made by petitioner but were made by Alpine School District for its own account and that Alpine School District thereby acquired ownership of such materials and was the owner thereof at the time they were incorporated into the school constructed. The commission further failed to recognize or properly account for the fact that in performing certain functions with respect to the materials purchased, petitioner was acting as an agent for the Alpine School District. In commiting these errors, the Commission failed to recognize or properly consider the relationship established by the written contract between petitioner, the general contractor, and Alpine School District, which evidences a clear intent on all parties that Alpine School District be the purchaser and remain the owner of the materials in question. The Commission also ignored relevant matters of conduct of petitioner and Alpine School District and of third-parties which are consistent with and which support petitioner's interpretation of the contract.

The Tax Commission committed legal error in failing to respect the contract of the parties as both written and carried out. The Commission did not apply principles of agency law correctly in concluding that petitioner was acting for itself with respect to the items purchased rather than as an agent of Alpine School District. The Commission also erred in applying as precedent in this case previous cases decided by the Commission in which the underlying issue was admittedly the same but in which many of the relevant facts were different from this case. Finally, the Commission erred in failing to apply the correct principles of law concerning the ownership and incident of sale/use taxation as enunciated by court cases, a Utah State Attorney General's opinion, and the Commission's own tax regulations.

The factual and legal basis for petitioner's assignment of error are more fully explained and developed below.

7. Statement of Facts

Beginning in June, 1985, the Alpine School District began construction of an elementary school. Bids were invited from interested contractors. On the 4th day of June, 1985, an agreement was made between the Board of Education of the Alpine School District and the general contractor. Article VII b. of the contract, specifically provides for the board of education to furnish all or part of the materials and equipment to be used in the permanent structure.

> The Board shall have the right to furnish any part or all of the materials and equipment which shall become a part of the permanent structure. The contractor shall negotiate and administer all such direct purchases by the Board and shall furnish to the Board a description, source of supply, trade discount information and other information necessary to enable the Board to purchase directly any such materials and equipment. Purchases by the Board shall be made on requisition or purchase orders furnished by the Board and signed by the duly authorized purchasing agent of the Board. Title to all such materials and equipment purchased by the Board shall pass from the vendor directly to the Board upon delivery to the job site, without any vesting in the contractor.

During the course of the project, Alpine School District purchased materials to be incorporated into the permanent structure on its own account and furnished these materials to petitioner. These materials were purchased on Alpine School District purchase orders and were paid for by checks drawn on Alpine School District accounts. Vendors sold the materials to the Alpine School District. The ownership of the materials in question clearly lay with Alpine School District. The general contractor acted as agent for the school district.

Throughout the contract, the Board's right to purchase equipment and materials is specifically set forth. The contractor had specific duties and responsibilities as an agent of the Board with regard to materials that the Board purchased. However, the guarantees required of the contractor differed with regard to materials purchased by the contractor and those materials purchased by the Board. On page 11 of the contract, this is clearly set forth:

> Every part of the work shall be executed and completed in a sound workman-like and substantial manner and all materials furnished by the contractor and used in construction shall be new and of the best of their respective kinds, except as otherwise distinctly directed in writing by the architect or allowed by the specifications.

8. Summary of Argument

The ownership of the material in question is of prime importance in this determination. Petitioner asserts, and rightly so, that pursuant to the contract documents and pursuant to the action of the parties, the materials in question were purchased and owned by the Alpine School District prior to their incorporation into the school. The materials were purchased on the Alpine School District account and petitioner merely incorporated these materials into the building. The conclusion set forth herein is in compliance with decisions of the Utah Supreme Court in this area. See Utah Concrete Products Corp. v. State Tax Commission, 101 Utah 513, 125 P.2d 408 (1942). Therefore, the determination of the Audit Division should be set aside.

Respectfully submitted,

KIRTON, McCONKIE & BUSHNELL

Brinton R. Burbidge

BRINTON R. BURBIDGE,
Attorney for Brown Plumbing
& Heating Co.

BRB/kp

VERIFICATION

The undersigned Petitioner does hereby verify, under penalty of perjury, that the contents of the above Petition for Redetermination are true and accurate, to the best of its information and belief.

BROWN PLUMBING & HEATING COMPANY

By Lee Brown
LEE BROWN

BEFORE THE STATE TAX COMMISSION OF UTAH

BROWN PLUMBING AND HEATING CO. 65 EAST 400 SOUTH OREM, UTAH Petitioner, vs. AUDITING DIVISION, STATE TAX COMMISSION OF UTAH, Respondent.	)	ANSWER TO PETITION FOR REDETERMINATION AND NOTICE Case No. 87-0435 AUDIT PERIOD: 10-1-83 through 9-30-86

RESPONDENT, Auditing Division, State Tax Commission of Utah, answers Brown Plumbing & Heating Co.'s Petition for Redetermination as follows:

Respondent does not agree it has errored in failing to recognized or properly account for the fact that the Petitioner was the purchaser of the building materials used in performing the contractual agreement. Respondent also does not agree that Petitioner served strictly as an agent for the Alpine School District for the purpose of purchasing the materials required to install the plumbing and heating system.

1. The total assessment is based on too separate agreements, one with Brigham Young University, (hereafter known as BYU) the other with Alpine School District. The Petitioner has presented arguments for Alpine School District only, however, the same situation exists as pertaining to the agreements with BYU. Petitioner has not stated he disagrees with the portion of the assessment attributable to the BYU

contracts.

2. Respondent takes the position that Petitioner had contracts with BYU to furnish and install the materials required for each job. This agreement makes Petitioner the consumer. Sales tax was calculated and considered in the original bid to BYU. BYU accepted that bid which included all material costs including sales tax.

3. BYU allowed Petitioner to use its purchase order numbers when ordering materials. No tax was charged by vendors, thinking they were dealing with BYU.

4. BYU reduced payments on the contract due Petitioner by the equivalent of sales tax the Petitioner did not pay.

5. The Alpine School District accepted the bid of the general contractor to construct Cedar Hollow Jr. High. The Petitioner was not the general contractor but a subcontractor for Paulsen Ellsworth Co.

6. Petitioner's arguments that Alpine School District purchased materials on its own account and then furnished these materials to Petitioner are in error. The Petitioner did not have a contract with Alpine School District. The Petitioner had a subcontract agreement with the general contractor, Paulsen Ellsworth Co. to furnish all labor and materials. It is further evident from the subcontract agreement that

Petitioner furnish all material where it states in paragraph four of Section 2, Payments; "Before issuance of the final payment the Subcontractor (Petitioner) if required shall submit evidence satisfactory to the contractor that all payrolls, material bills, and all known indebtedness connected with the subcontractor's work have been satisfied.

The agreement also states in paragraph seven of Section 2, "The subcontractor shall pay for all materials and labor used in, or in connection with, the performance of this contract..."

The auditors have relied on objective evidence supplied by Petitioner when requested. The contract between Petitioner and BYU clearly states that Petitioner is to furnish labor and materials. The same agreement existed between Petitioner and Paulsen Ellsworth Co., general contractor for the Alpine School District. Although BYU and Alpine School District required Petitioner to issue there purchase order numbers rather than his own, the fact remains that Petitioner is the consumer of the materials just as when he contracts to furnish and install materials for a taxable entity.

In the instant case, the Auditing Division requests the State Tax Commission to uphold the Statutory Notice of Deficiency, dated March 12, 1987, and to uphold the tax, full penalty and updated interest to the date of payment.

DATED this 8th day of May, 1987.

Bob Fenton
Field Auditing Supervisor
Auditing Division

Brinton R. Burbidge, #A0491
Blake T. Ostler, #A4642
KIRTON, McCONKIE & POELMAN
Attorney for Petitioner
1800 Eagle Gate Plaza
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 328-3600

THE UTAH STATE TAX COMMISSION

BROWN PLUMBING & HEATING CO. Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	:	STIPULATED FACTS Appeal No. 87-0435

Brown Plumbing and Heating Company (hereinafter "Petitioner") by and through its attorneys, Kirton, McConkie & Poelman, and the Auditing Division of the Utah State Tax Commission (hereinafter the "Respondent") by and through its attorneys, the Attorney General's Office of the State of Utah, hereby jointly and mutually stipulate that the following facts have been established and shall be considered as having been fully proven at a hearing in the above entitled matter:

PARTIES

1. The Petitioner, Brown Plumbing and Heating Company is a Utah Corporation having its principal and sole offices in Utah County, State of Utah.

2. The Auditing Division of the Utah State Tax Commission is a subdivision of the State of Utah charged with enforcing State tax laws.

RELATED PARTIES

3. The Board of Education of the Alpine School District (hereinafter the "School District") is a political subdivision of the State of Utah and a tax exempt entity under relevant State tax laws. The School District is the Owner of the construction project to build the Cedar Hollow Jr. High School.

4. Paulsen/Ellsworth Construction Company is a Utah Corporation having its principal offices in Salt Lake County, State of Utah. Paulsen/Ellsworth Construction Company acted as the School District's General Contractor in connection with construction of the Cedar Hollow Jr. High School located in Utah County under the jurisdiction of the School District.

BIDDING AND CONTRACT DOCUMENTS

5. Bids for the construction of the Cedar Hollow Jr. High School for the Alpine School District (hereinafter the "Project") were advertised and taken by the School District up to and including 2:00 p.m. 23 May 1985.

6. Instructions to bidders were given by the School District in conformance with State law and pursuant to AIA Documents A-701, Instructions to Bidders 1978 Edition.

7. Supplementary conditions to AIA Document A-201 General Conditions of the Contract for Construction, paragraph 20, Section J-6 provided for direct purchases of construction materials by the School District as follows:

20. DIRECT PURCHASES BY SCHOOL DISTRICT:

The Owner, at its sole option and discretion, may purchase certain major items and quantities of materials from the specifications for utilization in the project by writing Purchase Orders directly to suppliers of said major items in the Contract. The General Contractor and its subcontractors, when requested to do so by the Owner, shall make a list of materials and their cost which materials can be purchased directly in said manner. When approved by the Owner, the Owner may then provide purchase requisitions upon which the Contractor will specifically state its needs and schedules for delivery dates. Such Purchase Orders may then be written by the Owner from such requisitions. The Purchase Order amount plus the sales tax amount will be deducted from the total contract amount. Invoices received upon receipt of delivery of materials to the project site will be sent to the Owner for direct payment.

The Contractor shall in all such cases hold the Owner harmless for any losses, claims, defects, discrepancy, delays in delivery or other problems relating to such materials except where any such failure is attributable to the negligent acts of (sic) omissions by the Owner.

All risk of loss or damages to materials resulting from theft, vandalism or any other cause whatsoever, shall be assumed by the Contractor from and after the delivery of any such materials to the project site.

8. Pursuant to Section 15D of the Supplementary Conditions, Petitioner was required to furnish and install plumbing fixtures on the Project, subject to provision for change orders set forth in Paragraph 20, Section T-6 of the Supplementary Conditions.

9. On or about 4 June 1985, the School District and Paulsen/Ellsworth Construction Company entered into an agreement pursuant to which Paulsen/Ellsworth acted as General Contractor on the Project (hereinafter the "General Contractor's Agreement").

10. The General Contractor's Agreement established construction to begin 4 June 1985 and to be completed 1 May 1987.

11. The Supplementary Conditions of the Instructions to Bidders were incorporated as a part of the General Contractor's Agreement.

12. Article VIII, paragraph B of the Supplementary Conditions of Instructions to Bidders provides as follows:

> B. Furnishing of Labor and Materials & Direct Purchase by Board
>
> The Board[1] shall have the right to furnish any part or all of the materials and equipment which shall become a part of the permanent structure.
>
> The Contractor shall negotiate and administer all such direct purchases by the Board and shall furnish to the Board a description, source of supply, trade discount information and other information necessary to enable the Board to purchase directly any such materials and equipment. Purchases by the Board shall be made on requisition or purchase orders furnished by the Board and signed by the duly authorized purchasing agent of the Board. Title to all such materials and equipment purchased by the Board shall pass from the vendor directly to the Board upon delivery to the job site, without any vesting in the Contractor. After delivery, the risk of loss, damage, theft, vandalism, or destruction of or to any such materials and equipment purchased directly by the Board shall lie with the Contractor.
>
> Storage of any materials and equipment furnished by the Board shall be the responsibility of the Contractor. The Contractor shall hold the Board harmless of and from any failure of the suppliers of materials or equipment so purchased by the Board resulting in any loss, claim, defect, discrepancy, delay in delivery or any problem in (sic) relating to such materials or equipment.

---

[1]The "Board" means the Board of Education of Alpine School District

The Contractor shall acknowledge receipt and approval of any such materials or equipment purchased directly by the Board by signing the invoice for any such materials or equipment. The Board agrees to make payment for any such materials or equipment within a reasonable time after the receipt of the signed invoice from the Contractor.

The Board shall not be responsible for the loss of a prompt payment discount from the purchase price if the Board makes payment (determined by the date of mailing of the check for payment) within ten business days following the receipt by the Board of the signed invoice from the Contractor.

The contract price as set forth above shall be reduced by the amount actually paid by the Board for such materials and equipment furnished by the Board and by the sales tax which would have been paid on such materials and equipment had they been supplied by the Contractor. Similarly, the amount of any progress payment provided for above shall be adjusted to reflect the direct purchase of any such materials and equipment by the Board. The Board shall not be responsible for the loss of or reduction in any trade discounts available to the Contractor as a result of any purchases made by the Board.

All bonds and insurance, as called for in this agreement, shall remain in full force. There shall be no reduction in the amount of coverage or any deduction for premiums for said bonds and insurance. These provisions for direct purchase by the Board of materials and equipment shall not relieve the Contractor of any of its duties or obligations under this contract or constitute a waiver of the Board's right to absolute fulfillment of all the terms hereof.

The Contractor shall provide and pay for all materials and equipment not furnished by the Board and shall also provide and pay for labor, transportation, services, tools, machinery and all other items and services, necessary for the proper execution and completion of the work on the project according to the true intent and meaning of the contract documents, whether the same may or may not be particularly described therein, and according to such explanations and directions as the Architect may from time to time give for the purpose of the work. Every part of the work shall be executed and competed in a

> sound workmanlike and substantial manner and all materials furnished by the Contractor and used in the construction shall be new and of the best of their respective kinds, except as otherwise distinctly directed in writing by the Architect or allowed by the specifications. If the Contractor brings or puts into work any material or workmanship not in accordance with the contract documents, the Contractor shall, within 24 hours after he or his agents receive from the Architect written notice thereof, proceed to remove from the project all such materials, whether worked or unworked, and immediately take all portions of the work condemned by the Architect as unsound or improper.

13. The Owner, Alpine, reserved the right to award separate contracts to perform work with its own forces if it so desired in Article VI, Paragraph 6.1.1 of the General Conditions of the Contract for Construction as follows:

> 6.1.1 The Owner reserves the right to perform work related to the project with his own forces, and to award separate contracts in connection with other portions of the project or other work on the site under these or similar conditions of the Contract. If the contractor claims that delay or additional costs is involved because of such action by the Owner, he shall make such claims provided elsewhere in the contract documents.

14. The General Conditions of the Contract for Construction also provided that the Owner could amend the contract by change order and also subtract a contract sum from the total contract if it so desires. (See Article 12, Paragraphs 12.1.1 through 12.1.3)

15. Paragraph 3.3.1 of the General Conditions provides for the Owner's right to stop the work in the event of default or defalcations by the contractor.

16. Pursuant to Article 8 of the Supplementary Conditions of the Instructions to Bidders, the title to all materials purchased directly by Alpine on its own purchase orders, pass

from the vendor directly to the Board upon delivery to the job site without any vesting in the contractor.

17. On or about 20 February 1986, Paulsen/Ellsworth Company, as General Contractor, entered into a subcontract agreement with Petitioner Brown Plumbing and Heating Company (hereinafter "Subcontract"). A copy of the Subcontract is attached hereto as Exhibit "A."

18. Pursuant to the Subcontract, the Petitioner was the prime plumbing contractor on the project.

19. Lee Brown is an individual and President of the Petitioner.

20. The contracting documents provided for Change Orders.

21. Change Orders were in fact made to the Subcontract for materials directly purchased by the Petitioner. An example of such change Order typical of all change Orders is issued by the School District and attached hereto as Exhibit "B."

22. Pursuant to contract documents purchase orders were issued by the School District. An example of such purchase Order typical of all Purchase Orders issued by the School District is attached hereto as Exhibit "C."

23. No materials were retained from the Project by the Petitioner. All materials purchased by the School District and installed by the Petitioner became fixtures or a part of the Jr. High School building.

24. A warranty was provided to the School District for work performed by the Petitioner by PVI Industries, Inc. The Petitioner installed the water heater as a part of the Project. The warranty covered installation and performance of a water heater which was installed

by the Petitioner. The warranty recognized the School District as the Owner and appropriate claimant for any defects which may occur with the water heater. There were no other warranties on materials installed in the project by the Petitioner.

25. Dr. Harold Jacklin was the School District's Construction Supervisor, and representative for the Project.

26. Dr. Harold Jacklin is an employee of the Alpine School District and has been since 1973.

27. Dr. Jacklin has supervised and managed other construction related projects as the School District's Construction Supervisor.

28. Dr. Jacklin completed an apprenticeship as a bricklayer.

29. Dr. Jacklin is generally familiar with all phases and common methods of construction and of the interfacing relationship between Architect, Contractor, Subcontractor and the School District through his experience.

30. Dr. Jacklin is also familiar with materials that are used in construction in general and with materials installed on the Project in particular.

31. Dr. Jacklin is also familiar with the materials purchases by the School District in general and with the material purchases for installation in the Project by Petitioner in particular.

32. Dr. Jacklin visited the Project site in the company of the Project Architect at least weekly during the construction.

33. Dr. Jacklin was ultimately responsible to authorize the issuance of purchase orders for construction materials on behalf of the School District. Mr. Sherm Wankier, an

employee and the Purchasing Agent for the School District, was directly responsible to fill out purchase orders on behalf of the School District and to send them to suppliers of materials for the Project.

34. The procedure for purchasing the materials for the amounts in dispute was as follows: the subcontractors contacted by the General Contractor in the bidding phase provided a list to the General Contractor to be included in the bid to the School District. The General Contractor and all subcontractors were informed that the School District, at its sole option and direction, may purchase certain items and quantities of materials from the Specifications for Utilization in the Project by issuing purchase orders directly to suppliers. Pursuant to the bidding documents and contract documents, Change Orders were executed for the listed materials that the School District, in its sole discretion, decided to purchase directly. The General Contractor notified Dr. Jacklin of the specific items needed under the Contract. The School District would then decided which materials to purchase directly. Thereafter a Change Order was executed by the School District and the purchase price of the materials together with sales tax thereon was subtracted from the total contract price of the General Contractor and from the Petitioner's subcontract. The School District, through Dr. Jacklin, then authorized Mr. Wankier to execute a Purchase Order to be sent to the supplier which had been identified by the separate subcontractors. School District purchases were accounted for by John Robins, an Alpine employee. The suppliers delivered the materials to the Project site. Petitioner notified the General Contractor that the materials had been delivered. After delivery, title passed directly from the vendor to the School District without any vesting in the Contractor or the Petitioner. The General

Paragraph 34 Stricken

Contractor then sent a request for payment to Dr. Jacklin as the School District's Construction Supervisor. Dr. Jacklin would occasionally inspect the delivered materials. If the materials conformed to contract documents, Dr. Jacklin then authorized the School District to issue a check for direct payment to the supplier for the materials. Mr. Greg Holbrook, an employee of the School District, then issued a School District check to the material supplier to pay for the materials.

35. After delivery, the risk of loss, damage, theft, vandalism, or destruction of or to any such materials and equipment so purchased would lie with the Contractor unless the damage resulted from the School District's fault. (Art. 7, ¶ B of Supplementary Contract Conditions).

36. An example of such a check by which the School District paid for Owner purchased materials and typical of all such checks issued by the School District is attached hereto as Exhibit "D."

37. The materials on the Project were covered by the School District's insurer, Educators Insurance Company, and State Risk Management. The School District provided insurance coverage for School District purchased materials after purchase and through construction of the building. (Article 11, paragraph 11.3, General Conditions of the Contract for Construction for Construction).

38. If the School District decided to directly purchase materials through the above described procedure, invoices received upon receipt of delivery of materials to the project site were sent to the owner School District for direct payment to the vendor. (Supplementary Contract Conditions, paragraph 20).

39. Article 5, General Conditions of the Contract for Construction:

5.2.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner and the Architect in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Architect has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

DATED this 15th day of May, 1991.

UTAH STATE ATTORNEY GENERAL

Clark Snelson
Assistant Attorney General
Attorneys for Utah State Tax Commission

KIRTON, McCONKIE & POELMAN

Blake T. Ostler
Attorneys for Petitioner

MAILING CERTIFICATE

I hereby certify that on the 17th day of May, 1991 I caused to be mailed a true and correct copy of STIPULATED FACTS to the following by mailing said copy through the United States mail, postage prepaid:

Bruce L. Olson
RAY, QUINNEY & NEBEKER
79 South Main, Suite 400
Salt Lake City, Utah 84111

Clark L. Snelson
Assistant Attorney General
Tax & Business Regulation Division
36 South State Street, Suite 1100
Salt Lake City, Utah 84111

Margarita Gonzales

D:\BTO\153-17\153-13.5

AGREEMENT

THIS AGREEMENT made and entered into this 4th day of June, 19 85, by and between the BOARD OF EDUCATION OF ALPINE SCHOOL DISTRICT, hereinafter referred to as the "Board", and Paulsen/Ellsworth Construction Company

hereinafter referred to as "Contractor."

WITNESSETH:

WHEREAS, The Board desires to employ Contractor for the purposes hereinafter specified; and

WHEREAS, Contractor desires to be employed by the Board on the terms and conditions hereinafter specified;

NOW, THEREFORE, the Board and Contractor for the consideration hereinafter set forth, do hereby covenant, promise and agree as follows:

ARTICLE I

DESCRIPTION OF WORK

Contractor shall fully perform the following described work in accordance with the plans, drawings and specifications herein called contract documents, which documents by this reference are made a part hereof:

000051

EXHIBIT
R-1

ARTICLE II

CONTRACT PRICE

The Board agrees to pay the Contractor for the work described, the total price of $6,299,995.00. Payment of this amount is subject to additions or deductions in accordance with the provisions of this agreement and of the other documents to which this agreement is subject.

ARTICLE III

PAYMENT

Payment of the total contract price is to be made as follows:

A. Progress Payments.

Not later than the Friday before the last Tuesday of the month, the Contractor shall present to the Architect a statement of the value of the work done and materials in place, itemized according to the headings of the specifications hereinbefore referred to and made part hereof. Not later than the last Tuesday of the month the Architect shall present to the Board his estimate of the value of said work and materials in place. The Board shall within ten days thereafter pay to the Contractor a ("progress payment") equal to 90% of the Architect's estimate of the work and materials in place but not paid for. Ten percent (10%) of the progress payment shall be withheld and retained by the Board until final payment is made pursuant to Article III, Section C hereof. The amount so withheld shall bear interest at the Federal Fund Rate at the end of each month. Said interest shall accrue for the benefit of the Contractor and any subcontractors and shall be paid after the project is completed and accepted by the Board. The contractor shall be responsible for the allocation of any

accrued interest between Contractor and any subcontractors and shall hold the Board harmless for any claims of subcontractors relating to the allocation of interest so paid by the Board. Interest shall not accrue on any money withheld by the Board from the Contractor or any subcontractors because of any default or nonperformance hereunder by the Contractor or subcontractors.

Progress payments may be withheld if:

(a) work is found defective and not remedied;

(b) Contractor does not make prompt and proper payments to subcontractors;

(c) Contractor does not make prompt and proper payments for labor, materials, or equipment furnished him;

(d) another Contractor is damaged by an act for which Contractor is responsible;

(e) claims or liens are filed on the job; or

(f) in the opinion of the Architect or the Board, Contractor's work is not progressing satisfactorily.

B. Additional Payment.

In addition to the progress payments referred to in the next preceding subparagraph, the Board may, in its own discretion, include in its monthly payment an amount up to but not exceeding 75% of the Architect's estimated value of materials delivered to the site but not yet incorporated in the project. The Contractor hereby warrants that all material delivered to the site for which payment hereunder is made shall not be removed from the site. If any such material is removed, Contractor agrees to promptly report such removal to the Board and to fully reimburse the Board for such loss.

C. Final Payment.

Final payment shall be made to Contractor by the Board within thirty (30) days after full completion of the buildings and the Board's final acceptance of the project as complete. As a condition precedent to final payment, the Contractor shall deliver to the Architect good and sufficient evidence that all claims due and chargeable to the Contractor have been paid, and should there prove to be any such claim after final payment, the Contractor hereby specifically covenants and agrees to refund to the Board upon demand all money and expenses that the Board may pay or incur in discharging any claim or lien against the Contractor or the Board on account of such work. The contractor agrees to defend the Board against any and all claims against the Board for materials and labor furnished in said construction, whether before or after final payment.

D. Payments Not Acceptance.

No payments under this agreement, either wholly or in part, shall be construed to be an acceptance of defective or improper materials or workmanship.

ARTICLE IV

DESIGNATION OF ARCHITECT; DUTIES AND AUTHORITY

The Architect for this project is MHT Architects

_____ OF

_____.

The duties and authority of the Architect are as follows:

A. General Administration of Contract.

The primary function of the architect is to provide the general administration of the contract. In performing these duties he is the Board's representative and duly authorized agent during the entire period of construction.

B. Inspections, Opinions, and Progress Reports.

The Architect will keep familiar with the progress and quality of the work by making periodic visits to the worksite. He will make general determinations as to whether the work is proceeding in accordance with the contract. He will keep the Board informed of such progress and will use his best efforts to protect the Board from defects and deficiencies in the work.

C. Access to Worksite.

The Architect shall be given free access to the worksite at all times during its preparation and progress. The Contractor shall also permit all persons appointed or authorized by the Architect or the Board to visit or inspect the said work or any part thereof at all times and places during the progress of the same and provide sufficient, safe and proper ways and means for such inspection.

D. Interpretation of Contract Document; Decisions on Disputes.

The Architect will be the initial interpreter of the contract document requirements and will make primary decisions on claims and disputes which arise. The decision of the Architect upon any question relating to the true meaning of the plans and specifications, performance or work or completion of job, shall be final and conclusive upon the parties hereto unless within five (5) days after such decision the party complaining, by written demand, requires a reconsideration on the matter so decided. If such demand is made, the question involved shall be reviewed by the Board at its next or regular or special meeting; and if upon such review the Board shall in any manner change the decision made by the Architect, the decision as so changed shall be final and conclusive. Except as herein provided, the decision of the Architect shall be final and conclusive upon the parties hereto.

E. Rejection and Stoppage of Work.

The Architect shall have authority to reject work which in his opinion does not conform to the contract documents and in this connection to stop the work or a portion thereof when necessary. The Architect shall inspect the project to determine if any material or workmanship is not in accordance with the provisions of the contract documents. If such material or workmanship is found the Architect shall notify the Contractor within a reasonable time after discovery of the nonconforming material or workmanship.

F. Payment Recommendations.

The Architect shall receive the Contractor's estimates of the value of the work and material done each month as provided herein and shall recommend to the Board the estimate of the work and materials in place but not paid for.

ARTICLE V

BEGINNING AND COMPLETION DATE; LIQUIDATED DAMAGES

Construction under this contract shall begin on

June 4, 19 85, and be completed by

May 1, 19 87.

The contractor agrees that the Construction covered by this agreement shall be prosecuted regularly, diligently and without interruption at such rate of progress as will insure full completion thereof in the time specified in this agreement.

In the event Contractor shall fail to fully complete the project within the time specified in this agreement, or any extension thereof agreed to in writing by the Board and Contractor, Contractor expressly agrees as part of the consideration for the awarding of this agreement to pay to Board for each and every day that the building

shall remain uncompleted after said completion date the sum of $ 500.00 per calendar day as liquidated damages but not as penalty, for the failure of Contractor to complete the project by said completion date.

It is expressly understood and agreed by Board and Contractor that the time specified herein for completion of the project and the amount of said liquidated damages are fair and reasonable.

It is further expressly understood and agreed by Board and Contractor that in fixing said completion date and in determining the amount of said liquidated damages, the following factors among others have been taken into consideration:

A. The urgent need of the Board to have the project completed by the time specified in order to fulfill its educational commitments;

B. The size, design and location of the project;

C. The quantity, quality and probable availibility of labor and materials involved in the construction of the project;

D. The total dollar amount of this agreement;

E. The average climatic range, the customary weather for the time period of the agreement and the usual customs and practices prevailing in the construction industry in this area;

F. The impossibility of ascertaining and fixing the actual damages the Board would sustain in the event of delay in the completion of the project;

G. The applicable laws and governmental rules and regulations.

It is further expressly understood and agreed that in the event of delay in completion of the building beyond the specified completion date, the amount of liquidated damages shall be deducted and

retained by Board from amounts withheld by Board as provided in this agreement, provided that in the event the withheld amounts are insufficient to pay liquidated damages, Contractor shall upon demand promptly pay said deficiency to Board.

Contractor shall not be charged with liquidated damages or any excess cost when the delay in the completion of the project is due to any of the following:

A. General strikes, acts of God, or the public enemy, acts by the Board, or casualty beyond the control and not the fault or negligence of Contractor;

B. Delays of subcontractors or suppliers occasioned by any of the causes specified in the next preceding subparagraph.

ARTICLE VI

CONTRACT DOCUMENTS

The documents which constitute the contract documents of this agreement and which by this reference are made a part hereof as though expressly set forth are:

A. This agreement;

B. General Conditions;

C. Supplemental General Conditions;

D. The plans, specifications and drawings with any addenda attached thereto issued before execution of this agreement and any ammendments hereafter to be made;

E. Written interpretations of the contract documents and directives to be made from time to time by the Architect and the Board; and

F. Work change orders issued or to be issued.

The contract documents together form the contract for the work herein described. The parties intend that the documents include provisions for all labor, materials, equipment, supplies and other items necessary for the execution and completion of the work and all terms and conditions of payment.

ARTICLE VII

RESPONSIBILITIES OF CONTRACTOR

Contractor's duties, rights and responsiblities in connection with the project herein are as follows:

A. Responsibility for and Supervision of Construction.

Contractor shall be solely responsible for all construction under the contract, including the techniques, sequence, procedures, and means, for the coordination of all work; he shall supervise and direct the work to the best of his ability and give it all attention necessary for such proper supervision and direction.

B. Furnishing of Labor and Materials & Direct Purchase by Board.

The Board shall have the right to furnish any part or all of the materials and equipment which shall become a part of the permanent structure.

The Contractor shall negotiate and administer all such direct purchases by the Board and shall furnish to the Board a description, source of supply, trade discount information and other information necessary to enable the Board to purchase directly any such materials and equipment. Purchases by the Board shall be made on requisition or purhase orders furnished by the Board and signed by the duly authorized purchasing agent of the Board. Title to all such materials and equipment purchased by the Board shall pass from the vendor directly to the Board upon delivery to the job site, without any vesting in the Contractor.

After delivery, the risk of loss, damage, theft, vandalism, or destruction of or to any such materials and equipment purchased directly by the Board shall lie with the Contractor.

Storage of any materials and equipment furnished by the Board shall be the responsibility of the Contractor. The Contractor shall hold the Board harmless of and from any failure of the suppliers of materials or equipment so purchased by the Board resulting in any loss, claim, defect, discrepancy, delay in delivery or any problem in relating to such materials or equipment.

The Contractor shall acknowledge receipt and approval of any such materials or equipment purchased directly by the Board by signing the invoice for any such materials or equipment. The Board agrees to make payment for any such materials or equipment within a reasonable time after the receipt of the signed invoice from the Contractor.

The Board shall not be responsible for the loss of a prompt payment discount from the purchase price if the Board makes payment (determined by the date of mailing of the check for payment) within ten business days following the receipt by the Board of the signed invoice from the Contractor.

The contract price as set forth above shall be reduced by the amount actually paid by the Board for such materials and equipment furnished by the Board and by the sales tax which would have been paid on such materials and equipment had they been supplied by the Contractor. Similiarly, the amount of any progress payment provided for above shall be adjusted to reflect the direct purchase of any such materials and equipment by the Board. The Board shall not be responsible for the loss of or reduction in any trade discounts available to the Contractor as a result of any purchases made by the Board.

All bonds and insurance, as called for in this agreement, shall remain in full force. There shall be no reduction in the amount of coverage or any deduction for premiums for said bonds and insurance. These provisions for direct purchase by the Board of materials and equipment shall not relieve the Contractor of any of its duties or obligations under this contract or constitute a waiver of the Board's right to absolute fulfillment of all the terms hereof.

The Contractor shall provide and pay for all materials and equipment not furnished by the Board and shall also provide and pay for labor, transportation, services, tools, machinery and all other items and services, necessary for the proper execution and completion of the work on the project according to the true intent and meaning of the contract documents, whether the same may or may not be particularly described therein, and according to such explanations and directions as the Architect may from time to time give for the purpose of the work. Every part of the work shall be executed and completed in a sound workmanlike and substantial manner and all materials furnished by the Contractor and used in the construction shall be new and of the best of their respective kinds, except as otherwise distinctly directed in writing by the Architect or allowed by the specifications. If the Contractor brings or puts into work any material or workmanship not in accordance with the contract documents, the Contractor shall, within 24 hours after he or his agents receive from the Architect written notice thereof, proceed to remove from the project all such materials, whether worked or unworked, and immediately take all portions of the work condemned by the Architect as unsound or improper.

C. Extra Work.

The Contractor shall not deviate from the drawings or specifications, or execute any extra work of any kind whatsoever unless

authorized in advance in writing by the Architect. The amount to be paid, allowed or deducted on account of any such alterations or extra work, if any, shall be stated in writing, or provision made for the determination thereof in said written authorization, and no claim shall be valid, nor shall any such be due and owing to the Contractor therefor, unless such written extra work change order stating the amount to be paid or allowed or providing for the determination of such amount, shall precede the change made or work done.

D. Discipline and Employment.

The Contractor shall maintain at all times strict discipline among his employees, and he agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he was employed.

E. Access to Job Site.

The Contractor shall permit all persons appointed or authorized by the Board or the Architect to visit or inspect the project or any part thereof at all times and places during construction, and provide sufficient, safe and proper ways and means for such inspection. When so directed by the Architect, the Contractor shall prevent the entrance or presence upon the project of any person or persons not engaged or employed in the work. Should the Contractor fail so to do, the Architect acting for the Board, may employ such guards, watchmen or other person as he from time to time deems necessary. All expense thereof shall be chargeable against the Contractor and may be deducted from any amount due or to become due the Contractor.

F. Compliance with Laws and Regulations.

The Contractor shall conform in all respects to the provisions and regulations of any general or local act or ordinance, or of any local or government authority which may be applicable to the said work.

and indemnify the Board against all penalties incurred by reason of the non-observance of any such provision or regulation.

G. Procurement of Licenses and Permits.

The Contractor shall secure all licenses and permits necessary for proper completion of the work, paying the fees therefor.

H. Safety.

Contractor has the duty of providing for and overseeing all safety orders, precautions, and programs necessary to the reasonable safety of the work, specifically including, but not limited to, the Occupational Safety and Health Standards. In this connection, he shall take reasonable precautions for the safety of all work employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent thereto, complying with all applicable laws, ordinances, rules, regulations and order.

I. Clean-Up.

Contractor agrees to keep the work premises and adjoining ways free of waste material and rubbish caused by his work or that of any subcontractors. He further agrees to remove all such waste materials and rubbish on termination of the project, together with all his tools, equipment, machinery, and surplus materials. He agrees, on terminating his work at the site, to conduct general clean-up operations at the direction and to the satisfaction of the Architect and the Board.

ARTICLE VIII

TIME OF ESSENCE: EXTENSION OF TIME

All times state herein or in the contract documents are of the essence hereof. If an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence hereof.

Should the Contractor be delayed in the prosecution or the completion of the work required herein by any cause mentioned in this agreement, or by any alteration or addition made in said work by and under the authority of the Architect as herein provided, then the time herein fixed for the completion of said work shall be extended for a period equivalent to the time lost by reason of any of the causes aforementioned. The extended period, if any, shall be determined and fixed by the Architect in writing, but no such allowance shall be made, unless a claim in writing therefor is presented by the Contractor to the Architect within a 48-hour period after the occurrence of any such alleged cause. If, on account of any of such causes, the Architect shall deem it advisable to suspend the work, he shall have the right and power to do so without extra charge being made by the Contractor, but the time of suspension, if any, will be allowed in addition to the time stipulated for completing the performance of the work required by the contract documents.

ARTICLE IX

INSURANCE

A. General Liability Insurance.

The Contractor shall procure and keep in force at his own expense during the term of this agreement comprehensive general liability insurance with minimum limits as follows:

(1) $250,000 bodily injury or death for each person, $500,000 for each occurrence, and $500,000 aggregate;

(2) $100,000 for property damage for each occurrence and $300,00 aggregate.

B. Automobile Liability.

The Contractor shall procure and keep in force at his own

expense during the term of this agreement comprehensive automobile liability insurance with minimum limits as follows:

(1) $100,000 for bodily injury or death for each person and $300,000 for each occurrence;

(2) $100,000 for property damage for each occurrence.

C. Owner's Protective Liability.

The Contractor shall procure and keep in force at his own expense during the term of this agreement Owner's protective liability insurance with minimum limits as follows:

(1) $250,000 for bodily injury or death for each person, and $500,00 for each occurrence;

(2) $100,000 for property damage for each occurrence and $300,000 aggregate.

D. Fire Insurance, Vandalism and Malicious Mischief.

The Contractor shall procure and keep in force at its own expense during the term of this agreement, fire, theft, and extended coverage insurance with a minimum limit of 100% of the insurable value of the project. The insurance premiums shall be paid by the Contractor and the policy shall be made payable to the Alpine Board of Education. The Contractor shall include vandalism and malicious mischief coverage.

E. Workmen's Compensation and Employer's Liability Insurance.

The Contractor shall comply with the provisions of the Workmen's Compensation Act, the Utah Unemployment Compensation Act, and all other legislation, federal and state, applicable to the work described herein, and the Contractor agrees to make all payments, returns and reports required by these acts.

F. Insurance Companies.

The Contractor agrees that all insurance policies required

under this article shall be issued by a company or companies satisfactory to the Board.

G. Certificates of Insurance.

Before this agreement shall become binding and effective, and as a condition thereof, the Contractor shall furnish to the Board certificates of insurance covering all of the insurance policies called for herein. Should any such policy be cancelled or expire, Contractor agrees to give the Board ten days' written notice thereof.

H. Commencement.

The Contractor shall not commence work under this agreement nor shall he allow the subcontractor to commence work until the Contractor has obtained the insurance policies, furnished certificates of insurance to the Board, and obtained appoval by the Board of said policies as required herein.

ARTICLE X

HOLD HARMLESS AGREEMENT

In addition to obtaining insurance as provided in Article IX, the Contractor agrees to indemnify and hold harmless the Board and Architect, their agents and employees, from and against all claims, damages, losses and expenses, including reasonable attorney's fees, arising out of performance of the work herein which is caused in whole or in part by Contractor's negligent act or omission or that of a subcontractor, or that of anyone employed by them or for whose acts Contractor or subcontractor may be liable. This reference includes but is not limited to bodily injury or death, including injury to the Board's student, faculty or staff; property damage to the Board's property whether said property is part of the project or not, including loss of use; damage to or loss of use of the Contractor's properties; damage to or loss of use of any other property.

ARTICLE XI

WORK CHANGES

The Board or the Architect reserves the right to order work changes in the nature of additions, deletions, or modifications, without invalidating the contract, and agree to make corresponding adjustments in the contract price and time for completion. All changes will be authorized by written change orders signed by the Architect and approved by the Board. The change order will include conforming changes in the contract and completion time.

ARTICLE XII

THE BOARD'S RIGHTS UPON BREACH BY CONTRACTOR

In case the Contractor at any time refuses to order, contract for or supply promptly and at the right time, sufficient skilled workmen or sufficient and proper materials, or fails in any way to prosecute the work with promptness and diligence, or when so ordered so to do by the Architect fails to discontinue the employment of any person or persons whose presence or continued employment tends to delay or hinder the said work, or fails in the performance of any of the covenants and agreements herein contained, the Board shall thereupon have the power and shall be at liberty, after three days written notice to the Contractor or posting the same on said building, to order, contract for or otherwise provide such labor and materials as the Architect may deem necessary, and to deduct the cost thereof from any money then due or thereafter to become due to the Contractor under this agreement, or otherwise to charge the cost thereof to the Contractor, who shall be liable therefor. Also, if the Contractor fails in the performance of any of the covenants or agreements herein contained, the Board shall be at liberty immediately to terminate this Agreement as provided in Article XVII.

ARTICLE XIII

ACCEPTANCE

The occupation by students, faculty or others of a facility subject to this agreement shall in no way constitute acceptance of the work performed or materials used.

ARTICLE XIV

TERMINATION

Contractor may on thirty (30) days written notice to the Board and Architect terminate this contract before the completion date hereof when for a period of thirty (30) days after a progress payment is due, through no fault of Contractor, the Board fails to issue a certificate of payment therefor, or fails to make the payment. On such termination, Contractor may recover from the Board payment for all work completed and for any loss sustained by him for materials, equipment, tools or machinery to the extent of actual loss thereon plus loss of a reasonable profit, provided he can prove such loss and damages.

The Board on ten (10) days notice to Contractor, may and without prejudice or to any other remedy, terminate this contract before the completion date hereof, when Contractor defaults in performance of any provision herein, or fails to carry out the construction in accordance with the provisions of the contract documents. On such termination the Board may take possession of the work site and materials, equipment, tools and machinery thereon, and finish the work in whatever way he deems expedient if the unpaid balance on the contract price at the time of such termination exceeds the expense of finishing the work, the Board will pay such excess to Contractor. If the expense of finishing the work exceeds the unpaid balance at the time of termination, Contractor agrees to pay the difference to the Board.

On such default by Contractor, the Board may elect not to terminate the contract and in such event he may make good the deficiency of which the default consists, and deduct the costs from the progress payment then and to become due to Contractor.

ARTICLE XV

CHANGE IN SUBCONTRACTORS' LIST

The list of subcontractors submitted with the Contractor's bid may not be changed without written approval from the Architect and the Board.

ARTICLE XVI

ASSIGNMENT

The Contractor shall not let nor assign this agreement or any interest therein without the written consent of the Board, except that the Contractor may subcontract portions of the work in the usual course of business, he being and remaining at all times and under all circumstances primarily responsible to the Board therefor.

ARTICLE XVII

INVALIDITY OF WORD OR CLAUSE, ETC.

The parties hereby agree that if any word, clause, sentence, or paragraph of this agreement shall be declared invalid or unenforceable by any court of competent jurisdiction, the remainder of the contract shall not be affected thereby but shall remain binding on the parties.

ARTICLE XVIII

EXECUTORS AND ASSIGNS

The parties hereto bind themselves, their heirs, successors, executors, administrators and representatives to the full performance of this agreement.

ARTICLE XIX

PERFORMANCE AND PAYMENT BONDS

Before this agreement shall become effective or binding, the Contractor shall furnish the Board, at his own expense, a 100% Full Performance Bond and a 100% Material and Labor Full Payment Bond executed on forms acceptable to the Board with good and sufficient surieties, to be approved by the Board, and each of these two bonds shall be in the full penal sum of $6,299,995.00 Dollars, being equal to the full amount of the contract, conditioned that he will properly and fully perform all and each of the conditions and covenants of this Agreement in accordance with each and all of its provisions, and that he will promptly pay all persons supplying labor or material used in the prosecution of the work provided for in this Agreement.

IN WITNESS WHEREOF, the Contractor above named has hereto set his hand, and the Board has caused this Agreement to be signed by its proper officers thereunto duly authorized the day and year first above written.

Wm. A. Montgomery
ATTEST:

PAULSEN ELLSWORTH CO.

by: Richard M. Ellsworth
President

THE BOARD OF EDUCATION OF
ALPINE SCHOOL DISTRICT

Business Administrator and
Treasurer

by: Richard J. Sudweeks
President

Director, New School Facilities

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A201

General Conditions of the Contract for Construction

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION

1976 EDITION

TABLE OF ARTICLES

This document has been approved and endorsed by The Associated General Contractors of America.

INDEX

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Architect pursuant to Subparagraph 2.2.8, or (4) a written order for a minor change in the Work issued by the Architect pursuant to Paragraph 12.4. The Contract Documents do not include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these, or any other documents, unless specifically enumerated in the Owner-Contractor Agreement.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and the Contractor, but the Architect shall be entitled to performance of obligations intended for his benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Architect and any Subcontractor or Sub-subcontractor.

1.1.3 THE WORK

The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than triplicate by the Owner and Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications, or any of the other Contract Documents, the Architect shall identify such Documents.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications and copies thereof furnished by the Architect are and shall remain his property. They are to be used only with respect to this Project and are not to be used on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Architect on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's common law copyright or other reserved rights.

ARTICLE 2

ARCHITECT

2.1 DEFINITION

2.1.1 The Architect is the person lawfully licensed to practice architecture, or an entity lawfully practicing architecture identified as such in the Owner-Contractor Agreement, and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Architect means the Architect or his authorized representative.

2.2 ADMINISTRATION OF THE CONTRACT

2.2.1 The Architect will provide administration of the Contract as hereinafter described.

2.2.2 The Architect will be the Owner's representative during construction and until final payment is due. The Architect will advise and consult with the Owner. The Owner's instructions to the Contractor shall be forwarded

gh the Architect. The Architect will have authority on behalf of the Owner only to the extent provided Contract Documents, unless otherwise modified itten instrument in accordance with Subparagraph

The Architect will visit the site at intervals appro- to the stage of construction to familiarize himself ılly with the progress and quality of the Work and ermine in general if the Work is proceeding in ac- ıce with the Contract Documents. However, the ect will not be required to make exhaustive or con- ıs on-site inspections to check the quality or quan- the Work. On the basis of his on-site observations architect, he will keep the Owner informed of the ıss of the Work, and will endeavor to guard the r against defects and deficiencies in the Work of the ıctor.

The Architect will not be responsible for and will ıve control or charge of construction means, meth- echniques, sequences or procedures, or for safety ıtions and programs in connection with the Work, : will not be responsible for the Contractor's failure ry out the Work in accordance with the Contract nents. The Architect will not be responsible for or :ontrol or charge over the acts or omissions of the ıctor, Subcontractors, or any of their agents or em- ıs, or any other persons performing any of the

The Architect shall at all times have access to the wherever it is in preparation and progress. The ıctor shall provide facilities for such access so the ect may perform his functions under the Contract nents.

Based on the Architect's observations and an evalu- of the Contractor's Applications for Payment, the ect will determine the amounts owing to the Con- and will issue Certificates for Payment in such its, as provided in Paragraph 9.4.

The Architect will be the interpreter of the require- of the Contract Documents and the judge of the mance thereunder by both the Owner and Con-

The Architect will render interpretations necessary : proper execution or progress of the Work, with able promptness and in accordance with any time greed upon. Either party to the Contract may make ı request to the Architect for such interpretations.

Claims, disputes and other matters in question be- the Contractor and the Owner relating to the exe- or progress of the Work or the interpretation of the ıct Documents shall be referred initially to the ect for decision which he will render in writing a reasonable time.

All interpretations and decisions of the Architect ıe consistent with the intent of and reasonably in- : from the Contract Documents and will be in writ- in the form of drawings. In his capacity as inter- and judge, he will endeavor to secure faithful per- ıce by both the Owner and the Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

2.2.11 The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents.

2.2.12 Any claim, dispute or other matter in question between the Contractor and the Owner referred to the Architect, except those relating to artistic effect as provided in Subparagraph 2.2.11 and except those which have been waived by the making or acceptance of final payment as provided in Subparagraphs 9.9.4 and 9.9.5, shall be subject to arbitration upon the written demand of either party. However, no demand for arbitration of any such claim, dispute or other matter may be made until the earlier of (1) the date on which the Architect has rendered a written decision, or (2) the tenth day after the parties have presented their evidence to the Architect or have been given a reasonable opportunity to do so, if the Architect has not rendered his written decision by that date. When such a written decision of the Architect states (1) that the decision is final but subject to appeal, and (2) that any demand for arbitration of a claim, dispute or other matter covered by such decision must be made within thirty days after the date on which the party making the demand receives the written decision, failure to demand arbitration within said thirty days' period will result in the Architect's decision becoming final and binding upon the Owner and the Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede any arbitration proceedings unless the decision is acceptable to all parties concerned.

2.2.13 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph 2.2.13, nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.2.14 The Architect will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.2.15 The Architect will prepare Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Subparagraph 12.4.1.

2.2.16 The Architect will conduct inspections to determine the dates of Substantial Completion and final completion, will receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

2.2.17 If the Owner and Architect agree, the Architect will provide one or more Project Representatives to assist the Architect in carrying out his responsibilities at the site. The duties, responsibilities and limitations of authority of any such Project Representative shall be as set forth in an exhibit to be incorporated in the Contract Documents.

2.2.18 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the Owner, the Contractor and the Architect.

2.2.19 In case of the termination of the employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection whose status under the Contract Documents shall be that of the former architect. Any dispute in connection with such appointment shall be subject to arbitration.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall, at the request of the Contractor, at the time of execution of the Owner-Contractor Agreement, furnish to the Contractor reasonable evidence that he has made financial arrangements to fulfill his obligations under the Contract. Unless such reasonable evidence is furnished, the Contractor is not required to execute the Owner-Contractor Agreement or to commence the Work.

3.2.2 The Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

3.2.3 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

3.2.6 The Owner shall forward all instructions to the Contractor through the Architect.

3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Architect. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

ARTICLE 4

CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or

\rchitect for any damage resulting from any such i, inconsistencies or omissions in the Contract Docus. The Contractor shall perform no portion of the at any time without Contract Documents or, where red, approved Shop Drawings, Product Data or les for such portion of the Work.

SUPERVISION AND CONSTRUCTION PROCEDURES

The Contractor shall supervise and direct the Work, his best skill and attention. He shall be solely reible for all construction means, methods, techs, sequences and procedures and for coordinating rtions of the Work under the Contract.

The Contractor shall be responsible to the Owner e acts and omissions of his employees, Subcontracnd their agents and employees, and other persons rming any of the Work under a contract with the actor.

The Contractor shall not be relieved from his obliis to perform the Work in accordance with the act Documents either by the activities or duties of rchitect in his administration of the Contract, or by ctions, tests or approvals required or performed unaragraph 7.7 by persons other than the Contractor.

LABOR AND MATERIALS

Unless otherwise provided in the Contract Docu, the Contractor shall provide and pay for all labor, ials, equipment, tools, construction equipment and inery, water, heat, utilities, transportation, and other ies and services necessary for the proper execution ompletion of the Work, whether temporary or perit and whether or not incorporated or to be incored in the Work.

The Contractor shall at all times enforce strict dise and good order among his employees and shall not oy on the Work any unfit person or anyone not d in the task assigned to him.

WARRANTY

The Contractor warrants to the Owner and the ect that all materials and equipment furnished this Contract will be new unless otherwise specind that all Work will be of good quality, free from and defects and in conformance with the Contract nents. All Work not conforming to these require, including substitutions not properly approved and rized, may be considered defective. If required by rchitect, the Contractor shall furnish satisfactory evias to the kind and quality of materials and equip- This warranty is not limited by the provisions of raph 13.2.

TAXES

The Contractor shall pay all sales, consumer, use ther similar taxes for the Work or portions thereof led by the Contractor which are legally enacted at ne bids are received, whether or not yet effective.

PERMITS, FEES AND NOTICES

Unless otherwise provided in the Contract Docu, the Contractor shall secure and pay for the buildermit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Architect in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

4.8.2 Unless otherwise provided in the Contract Documents:

.1 these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;

.2 the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;

.3 whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

4.10 PROGRESS SCHEDULE

4.10.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information an estimated progress sched-

ule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

4.11 DOCUMENTS AND SAMPLES AT THE SITE

4.11.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Architect and shall be delivered to him for the Owner upon completion of the Work.

4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.12.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.12.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.2.14 unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's approval thereof.

4.12.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.

4.12.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect as provided in Subparagraph 2.2.14. All such portions of the Work shall be in accordance with approved submittals.

4.13 USE OF SITE

4.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

4.14 CUTTING AND PATCHING OF WORK

4.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

4.15 CLEANING UP

4.15.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials.

4.15.2 If the Contractor fails to clean up at the completion of the Work, the Owner may do so as provided in Paragraph 3.4 and the cost thereof shall be charged to the Contractor.

4.16 COMMUNICATIONS

4.16.1 The Contractor shall forward all communications to the Owner through the Architect.

4.17 ROYALTIES AND PATENTS

4.17.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Architect.

4.18 INDEMNIFICATION

4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom,

) is caused in whole or in part by any negligent act ission of the Contractor, any Subcontractor, anyone y or indirectly employed by any of them or anyone ıose acts any of them may be liable, regardless of er or not it is caused in part by a party indemnified ıder. Such obligation shall not be construed to nebridge, or otherwise reduce any other right or obli- of indemnity which would otherwise exist as to any ɔr person described in this Paragraph 4.18.

In any and all claims against the Owner or the ect or any of their agents or employees by any yee of the Contractor, any Subcontractor, anyone y or indirectly employed by any of them or anyone ıose acts any of them may be liable, the indemnifi- obligation under this Paragraph 4.18 shall not be l in any way by any limitation on the amount or f damages, compensation or benefits payable by or : Contractor or any Subcontractor under workers' kmen's compensation acts, disability benefit acts or employee benefit acts.

The obligations of the Contractor under this Para- 4.18 shall not extend to the liability of the Archi- is agents or employees, arising out of (1) the prepa- or approval of maps, drawings, opinions, reports. s, change orders, designs or specifications, or (2) ring of or the failure to give directions or instruc- ıy the Architect, his agents or employees provided iving or failure to give is the primary cause of the or damage.

ARTICLE 5

SUBCONTRACTORS

DEFINITION

A Subcontractor is a person or entity who has a di- ɔntract with the Contractor to perform any of the at the site. The term Subcontractor is referred to hout the Contract Documents as if singular in num- d masculine in gender and means a Subcontractor authorized representative. The term Subcontractor ıot include any separate contractor or his subcon- s.

A Sub-subcontractor is a person or entity who has a or indirect contract with a Subcontractor to per- ny of the Work at the site. The term Sub-subcon- is referred to throughout the Contract Documents ingular in number and masculine in gender and a Sub-subcontractor or an authorized representa- ereof.

AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

Unless otherwise required by the Contract Docu- or the Bidding Documents, the Contractor, as soon ticable after the award of the Contract, shall fur- the Owner and the Architect in writing the names persons or entities (including those who are to fur- aterials or equipment fabricated to a special design) ed for each of the principal portions of the Work. rchitect will promptly reply to the Contractor in stating whether or not the Owner or the Architect, ue investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner or the Architect has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.2.3 If the Owner or the Architect has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner or the Architect has no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting names as required by Subparagraph 5.2.1.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award

separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Architect any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive his Work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up and charge the cost thereof to the contractors responsible therefor as the Architect shall determine to be just.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by the law of the place where the Project is located.

7.2 SUCCESSORS AND ASSIGNS

7.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

7.3 WRITTEN NOTICE

7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice.

7.4 CLAIMS FOR DAMAGES

7.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder if and as required in the Bidding Documents or in the Contract Documents.

7.6 RIGHTS AND REMEDIES

7.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

7.6.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

TESTS

f the Contract Documents, laws, ordinances, rules, ions or orders of any public authority having juris- require any portion of the Work to be inspected, or approved, the Contractor shall give the Architect notice of its readiness so the Architect may observe ispection, testing or approval. The Contractor shall l costs of such inspections, tests or approvals con- by public authorities. Unless otherwise provided, vner shall bear all costs of other inspections, tests ovals.

f the Architect determines that any Work requires inspection, testing, or approval which Subpara- 7.7.1 does not include, he will, upon written au- tion from the Owner, instruct the Contractor to uch special inspection, testing or approval, and the ctor shall give notice as provided in Subparagraph f such special inspection or testing reveals a failure Work to comply with the requirements of the Con- ocuments, the Contractor shall bear all costs there- uding compensation for the Architect's additional s made necessary by such failure; otherwise the shall bear such costs, and an appropriate Change shall be issued.

equired certificates of inspection, testing or ap- shall be secured by the Contractor and promptly ed by him to the Architect.

the Architect is to observe the inspections, tests ovals required by the Contract Documents, he will promptly and, where practicable, at the source of

NTEREST

ayments due and unpaid under the Contract ents shall bear interest from the date payment is such rate as the parties may agree upon in writing he absence thereof, at the legal rate prevailing at ce of the Project.

RBITRATION

ll claims, disputes and other matters in question n the Contractor and the Owner arising out of, or to, the Contract Documents or the breach there- ept as provided in Subparagraph 2.2.11 with re- the Architect's decisions on matters relating to effect, and except for claims which have been by the making or acceptance of final payment as d by Subparagraphs 9.9.4 and 9.9.5, shall be de- y arbitration in accordance with the Construction Arbitration Rules of the American Arbitration tion then obtaining unless the parties mutually therwise. No arbitration arising out of or relating Contract Documents shall include, by consolida- inder or in any other manner, the Architect, his ees or consultants except by written consent con- a specific reference to the Owner-Contractor ent and signed by the Architect, the Owner, the tor and any other person sought to be joined. No on shall include by consolidation, joinder or in ner manner, parties other than the Owner, the tor and any other persons substantially involved mmon question of fact or law, whose presence is required if complete relief is to be accorded in the arbitration. No person other than the Owner or Contractor shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons duly consented to by the parties to the Owner-Contractor Agreement shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

7.9.2 Notice of the demand for arbitration shall be filed in writing with the other party to the Owner-Contractor Agreement and with the American Arbitration Association, and a copy shall be filed with the Architect. The demand for arbitration shall be made within the time limits specified in Subparagraph 2.2.12 where applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.9.3 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any arbitration proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended.

8.1.4 The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8 1 2 He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by any other cause which the Architect determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine

8.3.2 Any claim for extension of time shall be made in writing to the Architect not more than twenty days after the commencement of the delay, otherwise it shall be waived In the case of a continuing delay only one claim is necessary The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

8.3.3 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.2 8 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 This Paragraph 8 3 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to the various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Architect may require This schedule unless objected to by the Architect shall be used only as a basis for the Contractor's Applications for Payment

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date for each progress payment established in the Owner-Contractor Agreement the Contractor shall submit to the Architect an itemized Application for Payment notarized if required supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site

9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens", and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Owner, with a copy to the Contractor for such amount as the Architect determines is properly due or notify the Contractor in writing his reasons for withholding a Certificate as provided in Subparagraph 9 6 1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on his observations at the site as provided in Subparagraph 2 2 3 and the data comprising the Application for Payment, that the Work has progressed to the point indicated that, to the best of his knowledge, information and belief the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion to the results of any subsequent tests required by or performed under the Contract Documents to minor deviations from the Contract Documents correctable prior to completion and to any specific qualifications stated in his Certificate), and that the Contractor is entitled to payment in the amount certified However by issuing a Certificate for Payment, the Architect shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means methods techniques

ces or procedures, or that he has made any exam- to ascertain how or for what purpose the Contrac- used the moneys previously paid on account of ıtract Sum.

'ROGRESS PAYMENTS

fter the Architect has issued a Certificate for Pay- ıe Owner shall make payment in the manner and he time provided in the Contract Documents.

ıe Contractor shall promptly pay each Subcon- upon receipt of payment from the Owner, out of ɔunt paid to the Contractor on account of such :ractor's Work, the amount to which said Subcon- is entitled, reflecting the percentage actually re- if any, from payments to the Contractor on ac- f such Subcontractor's Work. The Contractor shall, ɔpropriate agreement with each Subcontractor, re- ıch Subcontractor to make payments to his Sub- ractors in similar manner.

ıe Architect may, on request and at his discretion, to any Subcontractor, if practicable, information g the percentages of completion or the amounts for by the Contractor and the action taken there- ıe Architect on account of Work done by such ractor.

ıither the Owner nor the Architect shall have any ɔn to pay or to see to the payment of any moneys ubcontractor except as may otherwise be required

ı Certificate for a progress payment, nor any payment, nor any partial or entire use or occu- f the Project by the Owner, shall constitute an ıce of any Work not in accordance with the Con- :uments.

\YMENTS WITHHELD

e Architect may decline to certify payment and ıhold his Certificate in whole or in part, to the ecessary reasonably to protect the Owner, if in on he is unable to make representations to the s provided in Subparagraph 9.4.2. If the Architect : to make representations to the Owner as pro- Subparagraph 9.4.2 and to certify payment in the of the Application, he will notify the Contractor ied in Subparagraph 9.4.1. If the Contractor and ıitect cannot agree on a revised amount, the : will promptly issue a Certificate for Payment ımount for which he is able to make such rep- ɔns to the Owner. The Architect may also decline / payment or, because of subsequently discov- lence or subsequent observations, he may nullify le or any part of any Certificate for Payment y issued, to such extent as may be necessary in ɔn to protect the Owner from loss because of:

ective Work not remedied,

'd party claims filed or reasonable evidence indi- .ng probable filing of such claims,

ure of the Contractor to make payments prop- ' to Subcontractors or for labor, materials or ıipment,

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,

.5 damage to the Owner or another contractor,

.6 reasonable evidence that the Work will not be completed within the Contract Time, or

.7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents any amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and the Architect, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Architect a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will

promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Architect's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment and (3), if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

.1 unsettled liens,
.2 faulty or defective Work appearing after Substantial Completion,
.3 failure of the Work to comply with the requirements of the Contract Documents, or
.4 terms of any special warranties required by the Contract Documents.

9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

.1 all employees on the Work and all other persons who may be affected thereby;
.2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage or loss insured under Paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 4.18.

5 The Contractor shall designate a responsible mem-
f his organization at the site whose duty shall be the
ntion of accidents. This person shall be the Contrac-
superintendent unless otherwise designated by the
actor in writing to the Owner and the Architect.

The Contractor shall not load or permit any part
Work to be loaded so as to endanger its safety.

EMERGENCIES

In any emergency affecting the safety of persons
perty, the Contractor shall act, at his discretion, to
nt threatened damage, injury or loss. Any additional
ensation or extension of time claimed by the Con-
r on account of emergency work shall be deter-
d as provided in Article 12 for Changes in the Work.

ARTICLE 11

INSURANCE

CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall purchase and maintain such
nce as will protect him from claims set forth below
may arise out of or result from the Contractor's
tions under the Contract, whether such operations
himself or by any Subcontractor or by anyone di-
or indirectly employed by any of them, or by any-
or whose acts any of them may be liable:

claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts;

claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The insurance required by Subparagraph 11.1.1 shall
tten for not less than any limits of liability specified
Contract Documents, or required by law, which-
greater.

The insurance required by Subparagraph 11.1.1
nclude contractual liability insurance applicable to
ntractor's obligations under Paragraph 4.18.

Certificates of Insurance acceptable to the Owner
e filed with the Owner prior to commencement of
ork. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled until at least thirty days' prior written notice has been given to the Owner.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining his own liability insurance and, at his option, may purchase and maintain such insurance as will protect him against claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. If the Owner does not intend to purchase such insurance for the full insurable value of the entire Work, he shall inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of himself, his Subcontractors and the Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by failure of the Owner to purchase or maintain such insurance and to so notify the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto. If not covered under the all risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in an Application for Payment under Subparagraph 9.3.2.

11.3.2 The Owner shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

11.3.3 Any loss insured under Subparagraph 11.3.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause and of Subparagraph 11.3.8. The Contractor shall pay each Subcontractor a just share of any insurance moneys received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

11.3.4 The Owner shall file a copy of all policies with the Contractor before an exposure to loss may occur.

11.3.5 If the Contractor requests in writing that insurance for risks other than those described in Subparagraphs 11.3.1 and 11.3.2 or other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.3.6 The Owner and Contractor waive all rights against (1) each other and the Subcontractors, Sub-subcontractors, agents and employees each of the other, and (2) the Architect and separate contractors, if any, and their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 11.3 or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee. The foregoing waiver afforded the Architect, his agents and employees shall not extend to the liability imposed by Subparagraph 4.18.3. The Owner or the Contractor, as appropriate, shall require of the Architect, separate contractors, Subcontractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this Subparagraph 11.3.6.

11.3.7 If required in writing by any party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of his duties. He shall deposit in a separate account any money so received, and he shall distribute it in accordance with such agreement as the parties in interest may reach, or in accordance with an award by arbitration in which case the procedure shall be as provided in Paragraph 7.9. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate Change Order.

11.3.8 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five days after the occurrence of loss to the Owner's exercise of this power, and if such objection be made, arbitrators shall be chosen as provided in Paragraph 7.9. The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the directions of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.3.9 If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be cancelled or lapsed on account of such partial occupancy or use. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

11.4 LOSS OF USE INSURANCE

11.4.1 The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of his property, including consequential losses due to fire or other hazards however caused, to the extent covered by insurance under this Paragraph 11.4.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor signed by the Owner and the Architect, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

12.1.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in Subparagraph 12.1.4.

12.1.4 If none of the methods set forth in Clauses 12.1.3.1, 12.1.3.2 or 12.1.3.3 is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Architect on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clauses 12.1.3.3 and 12.1.3.4 above, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the Architect's Certificate for Payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion

ıange which results in a net decrease in the Contract will be the amount of the actual net cost as con-ɛd by the Architect. When both additions and credits ring related Work or substitutions are involved in one change, the allowance for overhead and profit be figured on the basis of the net increase, if any, respect to that change.

5 If unit prices are stated in the Contract Documents ıbsequently agreed upon, and if the quantities orig-' contemplated are so changed in a proposed Change 'r that application of the agreed unit prices to the tities of Work proposed will cause substantial in-y to the Owner or the Contractor, the applicable prices shall be equitably adjusted.

CONCEALED CONDITIONS

1 Should concealed conditions encountered in the ırmance of the Work below the surface of the ground ould concealed or unknown conditions in an existing ture be at variance with the conditions indicated by Contract Documents, or should unknown physical itions below the surface of the ground or should ealed or unknown conditions in an existing structure unusual nature, differing materially from those ordi-' encountered and generally recognized as inherent ork of the character provided for in this Contract, be untered, the Contract Sum shall be equitably ad-d by Change Order upon claim by either party made n twenty days after the first observance of the itions.

CLAIMS FOR ADDITIONAL COST

1 If the Contractor wishes to make a claim for an ase in the Contract Sum, he shall give the Architect en notice thereof within twenty days after the occur-of the event giving rise to such claim. This notice be given by the Contractor before proceeding to ite the Work, except in an emergency endangering r property in which case the Contractor shall pro-in accordance with Paragraph 10.3. No such claim be valid unless so made. If the Owner and the Con-ır cannot agree on the amount of the adjustment in ontract Sum, it shall be determined by the Architect. change in the Contract Sum resulting from such shall be authorized by Change Order.

. If the Contractor claims that additional cost is in-d because of, but not limited to, (1) any written ıretation pursuant to Subparagraph 2.2.8, (2) any by the Owner to stop the Work pursuant to Para-3.3 where the Contractor was not at fault, (3) any n order for a minor change in the Work issued pur-to Paragraph 12.4, or (4) failure of payment by the ɛr pursuant to Paragraph 9.7, the Contractor shall such claim as provided in Subparagraph 12.3.1.

MINOR CHANGES IN THE WORK

The Architect will have authority to order minor es in the Work not involving an adjustment in the act Sum or an extension of the Contract Time and ıconsistent with the intent of the Contract Docu-. Such changes shall be effected by written order, hall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the Architect or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Architect has not specifically requested to observe prior to being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Architect's additional services made necessary thereby.

13.2.2 If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.5.1, 13.2.1 and 13.2.2, unless removal is waived by the Owner.

13.2.4 If the Contractor fails to correct defective or non-conforming Work as provided in Subparagraphs 4.5.1, 13.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Architect's additional services made necessary thereby If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued If the payments then or thereafter due the Contractor are not sufficient to cover such amount the Contractor shall pay the difference to the Owner

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal

13.2.7 Nothing contained in this Paragraph 13 2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or non-conforming Work he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the Work is stopped for a period of thirty days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, or if the Work should be stopped for a period of thirty days by the Contractor because the Architect has not issued a Certificate for Payment as provided in Paragraph 9.7 or because the Owner has not made payment thereon as provided in Paragraph 9 7, then the Contractor may, upon seven additional days written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 TERMINATION BY THE OWNER

14.2.1 If the Contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days' written notice terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner The amount to be paid to the Contractor or to the Owner, as the case may be shall be certified by the Architect, upon application, in the manner provided in Paragraph 9 4, and this obligation for payment shall survive the termination of the Contract

CONDITIONS

PART J

SUPPLEMENTARY CONDITIONS

1. TIME OF COMPLETION OF WORK

Work shall be started within 10 days after being notified in writing by the Architect, and shall progress with a sufficient force of workmen and ample supply of materials to assure the completion of the contracted work no later than:

May 1, 1987

2. EXAMINATION OF SITE

Bidders are required to visit the site. Failure to visit the site will in no way relieve the successful bidder from necessity of furnishing any materials or performing any work that may be required to complete work in accordance with Drawings and Specifications without additional cost to Owner.

3. ACCEPTANCE OF PRIOR WORK

Each trade or subcontractor whose work is executed in relation to prior work, shall carefully inspect this prior work and notify the Architect in writing of any defects, improper workmanship, or materials or other conditions that would affect the satisfactory execution and permanency of his work. No further work shall be executed until all such defects or conditions have been corrected or an agreement reached regarding defects which may develop due to the conditions so noted. The absence of any such notification will be construed as an acceptance by these trades or Subcontractors of all prior related work and later claims of defects in this work will not in any way relieve these trades or Subcontractors from responsibility for correcting this work, unless specifically stated otherwise under a section of the Specification of a certain trade.

4. SUBSTITUTIONS

Bidder Nominated Substitutions Approved Prior to Bidding: See Article 3.3 of "Instructions to Bidders."

Bidders may, in addition to the above approved substitutions, submit bids on nominated substitute items bearing brands or trade names other than

EXHIBIT

those noted in the accompanying specifications or approved by addendum, prior to bidding. Those contractor nominated substitutes, not approved prior to bidding, shall be submitted under the following procedure.

a. The Contractor nominating a substitute item must accompany his bid with full specifications, catalogs, cuts, photographs, or samples of each item and must be prepared upon request to demonstrate to the Owner and the Architect, that the item bid is the equivalent of or superior to the item described in the accompanying specifications.

b. The Contractor shall name the substitute item, together with the amount to be added to or deducted from his/their bid in the appropriate position on the "Bid Form for Proposed Substitutions" and submit same with the bid.

c. All substitutions shall be reviewed by the Architect, Owner and apparent low bidder before drafting the contract between Owner and Contractor. Any and all substitutions accepted shall be named in the contract between Owner and Contractor and the bid price adjusted accordingly. Substitutions of materials and equipment will not be allowed after the signing of the contract, except when dictated by unforeseen circumstances such as:

(1) If a specified or accepted substituted item (noted in contract) is delayed by lengthy strike in factory, causing abnormal delay in project completion, a substitution would then be considered.

(2) If a specified or accepted substitute item (noted in the contract) is found to be unusable due to change or other circumstances, a substitution will be considered.

5. PRIOR OCCUPANCY

The Owner reserves the right to use and occupy the whole or any part of the building and installations which have been completed sufficiently to permit use and occupancy, and such use and occupancy shall not be construed as an acceptance of the work or any part thereof and any claims which the Owner may have against the Contractor, shall not be deemed to have been waived by such occupancy.

6. PROGRESS SCHEDULE

At the beginning of the work, the Contractor shall furnish to the Architect, six (6) copies of a progress chart, showing the time of starting

and completing the different parts of the work. This schedule shall be filed with equal number of copies at the end of each month showing the percentage of completion during the month.

7. BONDS

The General Contractor shall furnish a Performance Bond and a separate Payment Bond in the full amount of the Contract. The premium on the bonds shall be paid for by the Contractor.

8. BID BOND

The Contractor shall furnish a Bid Bond, cashier's or certified check in the amount of five percent (5%) of his bid, as specified in the Proposal and Advertisement.

9. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

In addition to the insurance required under Article 11 of the General Conditions, the Contractor shall effect and maintain the following insurance:

COVERAGE	HAZARDS	LIMITS OF LIABILITY
Bodily Injury	Automobile	$100,000.00 each person $300,000.00 each occurrence
Liability	Other than Auto	$100,000.00 each person $300,000.00 each occurrence
Property Damage	Automobile	$ 50,000.00 each
Property Damage	Other than Auto	$100,000.00 aggregate

The Contractor will also be required to furnish a certificate of insurance indicating he is insured to these limits.

Reference is made to Paragraph 4.18, Indemnification, of American Institute of Architects Document A-201 - General Conditions of the Contract for Construction.

10. RECORD DRAWINGS

The Mechanical and Electrical Contractors shall provide the General Contractor with a set of blue line drawings showing the changes made in the position of lines, pipes, ducts, equipment, etc., or any other changes made from the original Contract drawings. These changes shall be neatly and clearly drawn and lettered in pencil. The General Contractor shall then indicate clearly and neatly the changes that have been made in the Architectural Drawings. These drawings shall then be submitted to the Owner as a complete record of construction.

11. PROTECTION AGAINST THE ELEMENTS

The Contractor shall at all times take reasonable and adequate precautions to protect his work from damage by the elements, including flooding, windstorms, etc., and shall not expose the work of any other Contractor to such damage.

12. OVERTIME

If it should be necessary in order to complete the work within the time stipulated or to complete any portion of the work in its various stages in time to avoid delaying the work of other Contractors, the Contractor shall resort to overtime as far as it may be practicable, or possible, and without additional cost to the Owner.

13. TEMPORARY OR TRIAL USAGE

Temporary or trial usage by Owner of any mechanical device, machinery apparatus, equipment or any work or materials supplied under Contract before final completion and written acceptance by Architect shall be construed as evidence of Architect's acceptance of same.

Owner has privilege of such temporary or trial usage, for such reasonable time as Architect deems proper. Make no claim for damage for injury to or breaking of any parts of such work which may be caused by weakness or inaccuracy of structural parts or by defective material or workmanship.

If Contractor so elects, he may, without extra cost to Owner, place approved persons to make such trial usages. Make such trial under Architect's supervision.

14. MAINTENANCE MANUAL

At termination of work, the Contractor shall submit a rough draft of maintenance manual presenting full details for care and maintenance of equipment of every nature, including catalogs, describing each piece of equipment with parts list.

Upon approval, resubmit four (4) corrected, bound copies - including catalogs, information and parts lists by manufacturer of equipment.

15. MANUFACTURER'S DIRECTIONS

All manufactured articles, materials, equipment, shall be applied, installed, connected, used, cleaned, conditioned as per manufacturer's printed directions, unless specified to contrary.

16. FINAL CLEANING UP

Never throw rubbish from windows.

Besides general broom cleaning, the Contractor shall do the following special cleaning for all trades at completion of work in all areas, included under this Contract.

a. Clean all glass placed or replaced by this Contract.

b. Remove marks, stains, fingerprints, other soil, dirt from painted, decorated, stained work.

c. Clean and polish hardware for all trades; this shall include removal of stains, dust, dirt, paint and the like.

d. Remove spots, soil, paint from tile work, wash same.

17. PAYMENT

The Owner agrees to pay the Contractor from time to time as the work progresses, but not more than once each month and only upon certificate of Architect, for work performed during preceding calendar month for labor performed and materials furnished in place or on the site 90% of the value thereof.

18. SPECIALTY SIGNS:

Include an allowance of $3,500.00 for specialty signs and building plaque of design, material, content and location as directed by the Architect. Additions to or credits to the project for variations from the allowance shall be approved by the Architect.

19. PRE-CONSTRUCTION CONFERENCE:

A Pre-construction Conference shall be held at a time and place to be designated by the Architect.

Attendance by the following shall be mandatory:

Architect

General Contractor

Masonry Subcontractor

Roofing Subcontractor

Electrical Contractor

Mechanical Contractor

20. DIRECT PURCHASES BY SCHOOL DISTRICT:

The Owner, at its sole option and discretion, may purchase certain major items and quantities of materials from the specifications for utilization in the project by writing Purchase Orders directly to suppliers of said major items in the Contract. The General Contractor and its subcontractors, when requested to do so by the Owner, shall make a list of materials and their cost which materials can be purchased directly in said manner. When approved by the Owner, the Owner may then provide purchase requisitions upon which the Contractor will specifically state its needs and schedules for delivery dates. Such Purchase Orders may then be written by the Owner from such requisitions. The Purchase Order amount plus the sales tax amount will be deducted from the total Contract amount. Invoices received upon receipt of delivery of material to the project site will be sent to the Owner for direct payment.

The Contractor shall in all such cases hold the Owner harmless for any losses, claims, defects, discrepancy, delays in delivery or other problems relating to such materials except where any such failure is attributable to the negligent acts of omissions by the Owner.

All risk of loss or damage to materials resulting from theft, vandalism or any other cause whatsoever, shall be assumed by the Contractor from and after the delivery of any such materials to the project site.

21. (DELETED)

22. SPECIAL ACCOUNTING:

Within 30 days of contract award, submit to the Owner a lump-sum break-out of cost for the construction of Building Area "I" in it's entirety. This break-out is for the Owner's accounting purposes only and will have no bearing on the contract.

23. SEPARATE CONTRACTS:

It is the intent of the Owner to award subsequent separate contracts for the following categories of work:

Landscaping and Irrigation System.
Casework.
Floor Carpet.
Chalk and Tackboards.
Kitchen Equipment.
Intercom and Telephone Systems (Rough-in is in this contract).

Contractor is required to coordinate his work and the work of the above separate contracts to afford proper and timely completion of the work.

SECTION 15D - PLUMBING

PART 1 - GENERAL

SCOPE OF WORK:

Piping diagrams indicate runs, and are intended to be complete. Where fixtures are not shown connected to any services required, they shall be connected properly and completely. Connect all fixtures to various services, i.e., hot water, cold water, waste, vent, etc., as required. The work shall include furnishing of all materials and labor required for the job as described, together with all minor items implied or required to finish the entire work, and generally as follows:

Complete culinary water system throughout the project, including cold water system, hot water system, recirculating hot water system, hot water heaters, recirculating pumps.

Complete rain removal system, roof drains, and required piping.

Complete sanitary waste system, including sewer connection.

All plumbing fixtures, including connections to equipment furnished under other sections.

Cold water service to the project.

STANDARDS:

Plumbing installation shall be made in accordance with the latest Utah State Plumbing Code, Lehi City Code, and all other applicable governing codes.

In event drawings violate the codes, the contractor shall base his estimate on the code requirements.

See schedule on plans for sizing branch water lines to fixtures.

BURYING PIPE:

Outside pipe placed underground shall be buried deep enough to protect against freezing. Minimum depth of bury for water piping to be 60".

EXHIBIT P-3

Minimum bury on any piping shall be 18" to protect against damage.

DISINFECTING:

After the entire system is completed, tested for pressure, and just before the building is ready to be occupied, this contractor shall disinfect the system as follows:

After flushing the mains, introduce a water and chlorine solution.

The Division of Health requires that a 50 ppm chlorine solution be held in pipes for at least 24 hours with a 25 ppm residual. If that residual is not attained, the process must be repeated. Another acceptable procedure calls for a 300 ppm chlorine solution to be held for at least three hours and no longer than six hours. This high concentration would be expected to oxidize the cutting oil left on the piping better than the 50 ppm chlorine solution.

All valves should be opened periodically during the process, and the residual chlorine checked to insure that at least 50 percent of the initial concentration is present to complete the disinfection. If there is less than 50 percent, the valves should be allowed to drain water until the 50 percent or greater level is obtained. A make-up chlorine solution of a concentration equal to the initial concentration must be added, as needed, during the withdrawal of the spent solution. Flush system at all outlets to remove solution. Provide a written report of procedure used.

A warning sign shall be conspicuously posted at each water outlet and faucet during the disinfecting process to prevent occupants from drinking the water.

VERIFICATION OF GRADE:

The contractor shall excavate the point of connection and verify the elevation and location prior to the installation of the building footings or drainage system.

PART 2 - PRODUCTS

TRAPS:

Each fixture and appliance installed in the work and discharging water into the sewer or house drainage lines shall have a seal trap arranged in connection with a

complete venting system, and so installed that all gases shall pass freely to the atmosphere, with no pressure or syphon condition on the water seal. (17 gauge minimum).

VENTS:

The entire system shall be properly vented to atmosphere and discharge all gases at points not less than 10" above roof line. The main building drainage line and all soil and waste lines, together with each fixture vent line, shall be vented. The vent lines shall be joined together into the least practicable number of pipes to be projected thru the roof, and where vent lines are joined or grouped in the common vent, lines shall be properly increased in size. THe joining of vents shall be not lower than 4" above the highest fixture. Each fixture shall be back-vented on the discharge side of the safe water seal and arranged for free passage of all gases to atmosphere. Vent lines shall be offset in the attic, if necessary, so that they will not pierce the roof at a point near the edge of the roof. Provide vandalproof vent cap, Smith No. 1743 or Stoneman No. 1550 at all vents.

CLEANOUTS:

Approved cleanouts shall be installed in the base of each vertical soil, waste, or rainwater drainage line, and in the horizontal line at each change in direction. In addition, there shall be cleanouts spaced at a maximum spacing of 50' in all horizontal lines. All cleanouts shall be extended to accessible surfaces.

FLASHINGS:

All pipes passing thru the roof shall be neatly flashed with watertight 4# sheet lead, or 16 ounces copper flashing fitting snugly around the pipe, extended to the top and finished with a code-approved vent cap. The flange around the base shall be at least 18" square.

KITCHEN EQUIPMENT:

The plumbing contractor shall rough-in and make final connection to all kitchen equipment as noted on the drawings and/or as required by the equipment and manufacturer for a complete and operable installation.

Data shown on the drawings is for design equipment. This contractor will, prior to construction, be issued a kitchen equipment booklet actually being installed, and all rough-in and connection data shall be taken from this booklet.

This contractor shall provide all necessary valves, traps, unions, piping, vacuum breaker, etc., for a complete installation.

PRESSURE REDUCING VALVE:

Contractor shall furnish and install complete the line size water pressure reducing stations shown on the plans. PRV valve shall be Fisher, Strong, Klipfel, or approved equal.

BACKFLOW PREVENTERS:

Furnish and install complete the backflow preventers shown and specified on the plans. All backflow preventers shall be of the reduced pressure type, as manufactured by Beeco Model FRP or Watts Series 900.

PLUMBING FIXTURES:

This contractor shall furnish and install all fixtures shown or specified hereinafter and make all parts complete and leave the entire system in perfect working order. He shall clean and adjust all fixtures before leaving the job. Any damaged or cracked fixtures shall be replaced at the contractor's expense.

The fixtures shall be all new and complete as shown or described in catalog or required for the work, including accessible loose key compression stops above floor in supplies to all fixtures, and cast brass P-traps, unless otherwise shown. Trim for all fixtures shall be chrome-plated, and all trim shall match in design. Supply faucets shall be "Chicago Faucet" under the base bid with renewable seats and barrels. All fixtures shall be provided with loose key stops and rigid chrome supplies. Provide heavy duty hangers at all wall hung fixtures.

Fixtures shall be American Standard as specified, Eljer, Kohler, Just, Elkay, or Bradley.

Specialties shall be Zurn, Wade, Josam, or J. R. Smith. Brass shall be "Chicago Faucet" or as noted.

PLUMBING FIXTURES

WC-1	Water Closet:	American Standard #2502.011 "Glenco" syphon jet, wall hung, elongated bowl, 1-1/2" top spud; Sloan Royal 110 flush valve; Church 5320.114

		Moltex open front seat with stainless steel check hinge; Wade W-311 (horizontal) or W-331 (vertical) series carrier, single or double right or left as required, with foot support.
WC-2	Water Closet: (Handicapped)	Same as "WC-1."
WC-3	Water Closet:	American Standard #2342.012 "Tribor" syphon jet, floor-mounted, extended lip bowl, 1-1/2" top spud, vitreous china, Sloan Royal 110 flush valves; Church #5320.114 Moltex open front seat with stainless steel check hinge; 431310-100 bolt caps.
U-1	Urinal:	American Standard #6560.015 "Trimbrook" syphon jet, wall hung urinal with extended shields, wall hanger, open way trap, back and sidewall wash and top spud with Sloan 186 3/4" chrome flush valve w/vacuum breaker and flow regulating device.
U-2	Urinals: (Handicapped)	American Standard #6570.022 "Jetbrook" wall hung, blowout flushing rim, wall hanger, chrome-plated elbow, Sloan 186 flush valve w/vacuum breaker flow regulator. Provide a ball valve in supply line to each urinal for balancing water flow. Flush valve shall be Sloan 180 flush valve with vacuum breaker and flow regulator.
U-3	Urinal:	American Standard #6560.015 with Sloan Royal 186 flush valve w/vacuum breaker and wall hanger.
L-1	Lavatory:	American Standard #0351.072 "Lucerne" 20" x 18" vitreous

		china, front overflow, anti-splash rim, off-center basin, wall hanger, punched for concealed arm carrier, Chicago Faucet No. 802-335 "Tip-Tap" Centerset fitting with .5 gal./use - .25 GPM, No. E2805-5VP aerator, No. 327 strainer w/tailpiece, self-closing valves with vandal-proofing on all trim, No. 1016 supplies with stops; #4402.012 cast brass trap with cleanout. (Note: Install one Chicago Faucet No. 387-3/4" inlet sill faucet w/Watts outlet No. 8-VP vacuum breaker, 3/4" threaded hose outlet w/lock shield cap and No. 293-6 removable tee handle, polished chrome plate finish, high below one lav in each toilet room). Zurn ZN1231 concealed arm carrier with foot support.
L-2	Lavatory:	Same as "L-1," installed as indicated on the drawings.
L-3	Lavatory: (w/D.F. bubbler)	American Standard #4867.024 "Regalyn" 20" x 18" wall-mounted enameled cast iron lavatory w/soap depression and wall hanger; Chicago Faucet No. 795-E3-317 hi-lite "Quaturn" fitting with rigid gooseneck spout, aerator and pop-up drain, 4" wrist blade handles, No. 1018 supplies. Fitting ledge shall be drilled for and fitted with a Haws No. 5050 drinking fountain bubbler with self-closing 4-arm handle valve with automatic stream regulation, chrome-plated. Trap shall be American Standard #4402.012 cast brass P-trap.
L-4	Lavatory:	Elkay CHS-1514 stainless steel wall hung lavatory with 15" overall width and 12" x 10"

		basin, LK-8 drain fitting, LK-500 "P" trap, Chicago No. 1016 supplies with stops and Chicago No. 631 faucet with gooseneck, aerator, and cross handles.
DF-1	Drinking Fountain:	Wall-mounted, air-cooled, refrigerated type, to cool 15.4 gal./hr. from 80 deg. F to 50 deg. F with 90 deg. F EAT. 1/5 HP Hermetic compressor 120/1/60. Unit shall have 304 stainless steel top w/chrome-plated bubbler and self-closing pushbutton stop. Cabinet shall be bonderized steel with enameled finish as selected by the Architect. (Set top at 36" above floor). Note: Cut electrical cord at time of installation to suit electrical outlet provided. Fountain shall be Halsey-Taylor Model WM-14-A.
D-1	Disposal:	Insinkerator Model 77, 1/2 HP, 120/1/60 motor, all stainless steel construction with automatic reversing switch and built-in overload with manual reset. Unit shall be suitable for continuous feed application.
S-1	Sink:	Just DL1933BGR 7" deep, 33" x 19" double bowl, 20 ga. stainless steel self-rimming sink, soft satin finish with 4-hold flush fittings deck and sound dampening, Delta "Delex" Model 2400 two-handle washerless kitchen deck faucet with blade handles, spray, and vandalproof aerator, CF No. 1018 supplies, JV35T crumb cup strainer with the tailpiece and P-trap. (Provide disposer unit on each sink).

S-2	Sink:	Just SL 1921AGR, 19" x 21" top, 7-1/2" deep, 14" x 18" bowl, 18 ga. stainless steel, self-rimming, sound dampening, Just JV35% cup strainer, Chicago No. 786-E3VP-633 hi-lite "Quaturn" faucet with gooseneck and aerator, CF No. 1018 supplies, cast brass P-trap.
S-3	Wash Sink:	American Standard #8513.194 72" enameled cast iron with drillings for three (3) Chicago No. 445-GN-2H-E3 faucets and one back-mounted self-closing drinking bubbler on left end, C.F. No. 1018 supplies.
S-4	Sink:	Sink is provided under other section. Rough-in and connect waste and vent, hot and cold water. Provide traps and C.F. No. 1018 supplies. Faucets shall be Chicago No. 897 with Just No. J35 cup strainer.
S-5	Sink: (Darkroom)	Kreonite Model 24-8SW 96" x 33" three compartment processing sink on cabinet. Sink shall have (1) two KFC110 single valve faucets, (2) KFC110VB faucet with V.B., (3) KTB251 temperature blender with gauge (4) KF320S triple valve faucet with spray and KWF600 tempered water filter, (5) KFR124VJ washer jet circulation system. Unit shall be furnished with auxiliary storage base cabinet. Provide strainers and tailpipes with unit. Supplies shall be Chicago No. 1018 R-G Sloane 7225-F/ 7538 P-traps.
S-6	Sink:	Town & Country - 24" x 16"

		x 8" polypropylene laboratory sink with propylene sink strainer, plug and lock nut assembly. Provide tail piece and P-trap with union connection, (sink requires acid waste and vent connection). Supply faucet shall be Chicago Faucet No. LC930 double sink fitting with No. GN2B-E7 rigid goose-neck with Watts No. LF9 vacuum breaker and No. E7 serrated hose nozzle. No. 1018 supplies.
S-6H	Sink: (Handicapped)	Same as "S-6."
S-7	Sink:	Sink is provided under other section. Rough-in and connect waste, vent, hot and cold water to each location. Provide six Just NO. J35SSF316 strainers, tailpieces, and traps, and eight Chicago No. 445-GN-214-E3 faucets. Locate four faucets and three outlets on each side. See detail on Sheet A-49.
SS-1	Service Sink: (Floor type)	American Standard #7740.020 "Florwell" 28" x 28" service sink, floor-mounted, drain channels; Chicago Faucet No. 897 faucet with vacuum breaker, hose end, bucket hook, wall brace integral stops and rough chrome finish. Faucet to be mounted 30'-0" above finish floor; #7745.011 rim guard; #7721.020 drain with strainer for 3" connection.
EE-1	Emergency Eyewash: (Wall hung)	Haws Model 7060-BT stainless steel receptor, spray heads, valve with lever, stream control, trap, wall bracket.
ES-1	Emergency Spray:	Haws 8902 deck-mounted with chrome hand grip, deck flange,

		hose and guide, head, valve, and vacuum breaker.
SH-1	Shower:	Bradley No. 4CB - 6'-0" - PV-SH-2.5 FC-ST-AKV-DG multi-stall column shower for four (4) users, with supplies from above and vent thru column, height of shower heads to be 6'-0" washerless hot and cold "Posi-Pak" valves, stops in supplies and telescoping shroud, No. 441 standard adjustable spray shower head with vandalproof allen head set screws. Provide No. 503 flange anchoring kit and dome grate drain No. 535 towel tray.
SH-2	Shower:	Bradley No. 2W-MM4034-SS-6'-0"-PV-2.5 FC-ST multi-stall shower for two (2) users, with supplies from wall, height of shower heads to be 6'-0", washerless hot and cold "Posi-Pak" valves, stops in supplies, No. 441 standard adjustable spray shower head with vandalproof allen head set screws. Provide anchoring kit. Furnish and install MM4034 stainless steel partitions with herculite curtains. See Sheet A-46 for dimensions.
SH-3	Shower Head:	Chicago Faucet No. 767-8 hit-lite built-in two valve shower with No. 633 handles, No. 620-B shower head, shower arm, and wall flange for 8" centers, No. 1007 3 GPM flow control fitting.
SH-4	Shower Trim: (Handicapped)	Powers Model 414-1160 Hydro-guard shower valve with integral volume control valve, built-in shut-off valve with maximum temperature stop and pressure equalizing chamber.

		Head shall be Type-60 1/2" vandalproof with 3 GPM flow regulator and adjustable spray w/lock, set for handicapped height as detailed on plans. Hand held 60" SS hose with spray head, diverting valve and vacuum breaker. All items shall be set to handicapped heights and comply with standards of the Utah State Physical Handicapped Code.
HB-1	Hose Bibb:	Zurn Z-1310 3/4" "Ecolotrol" non-freeze anti-syphon wall hydrant with bronze casing and plain bronze face, provide with loose key and set screw for each hydrant.
HB-2	Hose Bibb:	Chicago Faucet No. 293 1/2" sill faucet with 3/4" hose thread outlet with lock shield can and No. 293-6 removable tee handle, rough chrome-plated, with wall flange and Watts No. 8-VP vacuum breaker with Allen screw lock.
HB-3	Hose Bibb:	Chicago Faucet No. 13 (No. 5T where connected to exposed piping) 1/2" hose bibb with No. 369 handle and 3/4" threaded outlet with Watts No. 8-VP vacuum breaker with Allen screw lock.
HB-4	Hose Bibb:	Chicago No. 690-L5-VB mixing faucet with 3/4" hose thread and vacuum breaker. Verify mounting height with School District.
FD-1	Floor Drain:	Zurn Z-415 2" Triumph drain with 4" diameter Type "B" strainer and deep seal P-trap.
FD-2	Floor Drain:	Zurn Z-508-S 4" heavy duty drain with deep flange grate

		secondary strainer, dura-coated cast iron body with Duresist" grate and deep seal trap.
FD-3	Floor Drain:	Zurn Z-615-L 4" extra heavy duty drain with sediment bucket, loose grate, dura-coated cast iron body, "Duresist" grate and deep seal trap.
ST-1	Sand Trap:	Furnish and install a Duracrete 5'-5" x 3'-11" two-cell sand trap shown on the drawings. Settling tank shall conform to Utah State Plumbing Code requirements, including latest revisions. Concrete walls must be poured continuous with floor. Provide heavy steel cover on inlet and outlet basin. Frames and cover to be treated with a corrosion-resistant coating. Field verify inlet elevation and provide extension, as necessary. Cover shall be flush with floor.
RD-1 & RD-2	Roof Drains:	Wade Model 3000 Series 49-52-53-NH cast iron body with combination membrane flashing clamp/gravel guard and low silhouette cast iron outlet size to match existing with Ty-seal gasket. Overflow (secondary) roof drains shall be as detailed on Sheet A-28 with support clamp and "stoneman" overflow cap.
DN-1	Downspout Nozzle:	Zurn Z-199 downspout nozzle, rough brass size to match pipe connection shown on plans. Downspout nozzle shall be installed with field installed brass birdscreen.

FS-1	Floor Sink:	Zurn ZN-1800-4 sanitor floor sink with 12" x 12" square top, full removable grate with center opening. N.B. dome, sani-coated exterior, acid resistant enamel interior, and Z-100 deep seal trap. Sink shall be complete with full grate, 3/4 grate, 1/2 grate, etc., as necessary, to match application.
DT-1	Dilution Tank:	GR Sloan Model NT-150 poly-olefin 200 gallon (31" dia. x 48" deep) dilution tank with pipe adapters for acid waste and vent connections. The contractor shall fill the tank to the appropriate level with marble chips, and shall provide an additional supply of marble chips for at least two (2) subsequent tank fillings to be performed by the Owner as required.
WR-1	Washer Rough-In:	Guy Gray WB-200 "Duo-Cloz" for in-the-wall installation with concealed piping, dual 1/2" ball valves with single lever on-off control, and hose connections. Rough chrome plate finish. (Verify mounting height with washer furnished) provided 1-1/2" stand pipe drain with P-trap for waste connection.
CW-1	Can Wash Assembly:	Acorn Crown Series Fig. No. 8110 with hose auxiliary supply connection. Stainless steel box frame and door, cylinder lock C.P. cast bronze WPOA approved vacuum breaker, control and diverter valves. Floor Drain: (Can Wash) J. R. Smith Fig. 3375 can washing floor drain. See

		detail on plans for installation.
CTP-1	Control Panel:	Cabinet shall be 12" x 12" x 5" with stainless steel cover and hinged locking cover. Provide 1" conduit and pull wire from panel to solenoid valves. Panel shall be furnished and installed by the Automatic Temperature Control Contractor. See Specifications, Section 15H.
G-1	Gas Outlet: (Deck Mounted)	Chicago No. 982-907 double gas outlet cocks on turret outlets at 90 deg. indexed for gas.
G-2	Gas Outlet: (Back Splash Mounted)	Chicago Faucet No. 987-907 double gas outlet cocks on serrated hose end tip and lever control handle indexed for gas.
MH-1	Manholes:	Furnish and install complete 5 ft. dia. manholes where shown on plans. Manholes shall be standard Salt Lake pattern with heavy cast iron manhole covers and rings. Pre-cast sectional type as manufactured by "Dura-Crete." See plans for invert and elevations.
WH-1	Water Heater:	1,000,000 BTUH input 750 gallon tank, power burner, 1400 gal./hr. recovery @ 70 deg. F, 953 gal. delivery for 15 min. peak, 2800 lbs. shipping 10" flue, draft regulator, and accessories as specified, 1/6 HP at 115/1/60. (Set at 110 deg. F). Water heater shall be PVI turbo power, Model No. 1250-1-V-750A-TP or A. O. Smith.
WH-2	Water Heater:	540,000 BTUH input, 125

		gallon tank, power burner, 648 gal./hr. at 80 deg. F, 925 lbs. shipping 8" flue, draft regulator, and accessories as specified, 1/3 HP at 115/1/60. (Set at 190 deg. F). Water heater shall be PVI turbo power, Model No. 625-1-V-150A-TP or A. O. Smith.
CP-1	Circulator Pump:	B & G Series HV 10 gpm at 12 ft. head, 1/6 HP, 115/1/60 all bronze construction.
CP-2	Circulator Pump:	B & G Series 100 5 gpm at 7 ft. head, 1/12 HP, 115/1/60 all bronze construction.
WS-1	Water Softener:	Bruner 600 HBR-3" 175 gpm continuous flow at 15 psi drop, single unit complete with controls, 600,000 grains exchange capacity, 20 cu. ft. resin, 36" diameter by 60" high softener and 38" diameter by 60" high brine tank, 3" face piping.
MV-1	Mixing Valve:	Powers 431 to mix 110 deg. F water with 180 deg. F water for 140 deg. F to 160 deg. F discharge (adjustable) 25 gpm at 45 psi, 3/4" inlets and outlets, discharge thermometer, and ball type service valves at inlet.
AC-1	Air Compressor:	Wayne W3116, 2-stage, 60-gallon ASME tank, R-10B compressor, 10.4 CFM displ. at 175 psi, 520 RPM, 2 HP, 208/3/60 complete with ASME relief valve, tank drain, pressure control switch, intake filter silencer, belt guard, and air-cooled after cooler. Provide a 1/2" pressure reducing valve with adjustable setting to be

mounted in the discharge piping.

WATER HEATERS (WH-1 & WH-2):

Furnish and install water heaters as shown on the plans. The water heaters shall be gas-fired with power burners.

The multi-flue tank shall be constructed in accordance with ASME Code and stamped with appropriate symbol for 160 psi working pressure. The tubes shall be covered with pure, dead soft copper, expanded and beaded into the tube sheet. Guarantee on tank shall be 10-year.

After completion fabrication, the tank shall be completely lined with glass.

The water heater shall be insulated with heavy density fiberglass insulation and trimmed with a baked enamel steel segmented jacket of field replaceable panels to meet code. The base shall allow seismic anchoring.

Lower operating thermostat, upper operating thermostat, 4" handhole, draft regulator, ASME pressure and temperature relief valve, temperature limiting device and a drain valve shall be factory installed.

A combination high and low pressure and low water protective device shall be factory installed.

The power burner shall be designed so that all components are outside the fire box for long life and ease of maintenance. It shall fire with a compact, swirling gas to burn more efficiently and release maximum Btu per volume of gas. A multivane blower shall be included to supply precise amount of air for complete combustion. The burner shall be listed by Underwriters' Laboratories.

The controls shall be R4795A solid state electronic safeguard primary control provides prepurging of the chamber and 2-4 second shutdown in the event of flame failure. Automatic gas valve with positive shutoff, positive blower safety, manual main burner gas valve, pilot valve, gas pressure regulator. The water heater shall fit properly into the space provided for it and shall conform to the drawing requirements. The complete installation shall be in accordance with all applicable state and local codes and installation drawings.

CIRCULATORS (CP-1 & CP-2):

Furnish and install the circulators shown and specified on the drawings. Circulators shall be of the in-line, pipe-mounted, motor driven, centrifugal type. All motors shall operate at 1750 RPM. Circulators shall operate at high efficiency and shall have a quiet, vibrationless operation. Provide steel support for motor. All circulators to be bronze fitted.

Circulators shall be Bell & Gossett or Armstrong.

WATER SOFTENER (WS-1):

General: The water softening equipment hereinafter specified will remove hardness, (expressed at CaCO3), to the extent that the effluent from the water softener shall contain not more than 0 grains per gallon of hardness, as determined by an accepted soap hardness test method.

Softener Tanks: Tanks will be designed for a working pressure of 100 psi and tested at 50% in excess of the working pressure. Sideshell height will be designed to allow a minimum freeboard space at 50% of the mineral bed depth for adequate expansion during backwashing. Tanks 30 inches in diameter and under will be equipped with two 4-inch x 6-inch handholes, one to be located in the top head and the other to be located in the sidesheet near the bottom of the tank. Tanks 36 inches in diameter an larger will be equipped with one 11-inch x 15-inch manhole located in top head of the tank, and one 4-inch x 6-inch handhole located in the side sheet near the bottom of the tank. Tanks will be either galvanized inside and out or have a six coat baked phenolic-epoxy lining on the interior and a corrosion-resistant exterior. All tanks will be supported on approved steel legs.

Collector System: The softener will have an approved standard lower distribution system and graded gravel supporting bed. Graded gravel shall consist of a minimum of three layers having a total height of not less than nine inches.

Brine System: A combination salt storage and brine measuring tank with cover will be furnished. The tank will be molded of corrosion-free, rigid polyethylene. The brine tank will be equipped with an elevated salt plate for the collection of concentrated brine and a suitable chamber for housing an automatic air eliminator-safety valve.

Automatic Controls: The main control valve will be scheduled inch pipe size of the hydraulically activated 4-

position type to accomplish the regeneration steps of backwash, brine-slow rinse, rapid rinse and service. Direction of flow will be controlled by a hydraulic rotary pilot which opens and closes 6 diaphragm valves slowly to avoid noise and shock. The valve will include self-adjusting flow regulators to properly control the rate of flow during the backwash, brine-rinse and rapid rinse positions regardless of pressure fluctuations between 30 and 120 psi. Flo-Pak models will be equipped with two hydraulically operated diaphragm assemblies to permit higher service flow rates without excessive pressure drop. The valve will be designed to prevent hardware bypass to service curing the regeneration cycle, if desired. This feature will not increase the pressure drop of the equipment in the service cycle. Valves shall be the same manufacturer as softener.

All control mechanisms will be enclosed in a gasketed moisture resistant case, rated as a NEMA III enclosure and conforming to Underwriters' Laboratories specifications.

Time Clock: Regeneration will be controlled by a 7-day calendar clock which permits regeneration at any time of the day or night, any or every day of the week. It will have provision for individual adjustment of the backwash and rinse cycles and shall also have a provision for manually regenerating the water softener in the event of power failure. It will operate on 120V/60Hz, single phase.

Automatic Brine System: A brine system will be provided which will automatically open to admit brine, close to prevent the entrance of air and refill the brine tank with the proper amount of water. Regulation of the brine dosage will be accomplished by adjustment of a salt dosage dial in the time clock case. The system will be designed to allow proper refilling regardless of salt level in the brine tank. As a safety feature, the brine tank will be equipped with a float operated shut-off to prevent brine tank overflow.

Mineral: The mineral furnished will be of the type designated as non-phenolic polystyrene resin having a minimum exchange capacity of 30,000 grains per cubic foot when regenerated with 0.5 lbs. of salt per 1000 grains of exchange capacity. It will be solid, of the proper particle size, (not more than 4 percent through 40 mesh U.S. standard screens and not more than 1 percent through 50 mesh U.S. standard screens, wet screening) and will contain no agglomerates, shells, plates, or other shapes which might interfere with the normal function of the water softener.

Pipes, Valves & Fittings: The main piping and fittings will be no smaller than the main control valve. Pipe will be standard weight (Schedule 40) galvanized mild steel. Fittings will be 125 lb. class galvanized malleable iron. Provide manual bypass valve assembly.

Water Testing Equipment: The softener will come complete with sample cock installed for obtaining samples for the effluent water. A complete water testing kit will be furnished for conducting a soap test.

Instructions: A complete set of instructions covering the installation and operation of the water softener will be provided in booklet form.

Softener unit system shall be Culligan, Bruner, L.A. Water.

Softener shall be ASME construction with National Board number.

WATER METER:

The water meter will be provided by the City of Lehi. The fee for this work will be paid by the Alpine School District directly to the City of Lehi. Coordinate the locations of the meter to insure proper placement in Boiler Room.

The water meter and all associated piping and valves will be provided by the plumbing contractor. Meter, valves, and installation shall be in accordance with Lehi City requirements. The water connection fee will be paid by the Alpine School District directly to Lehi City. Coordinate the location of the water meter to insure proper placement in the Boiler Room.

AIR COMPRESSOR AND STORAGE TANK:

Furnish and install complete the air compressor, storage tank, and accessories shown and specified on the plans and in the equipment schedule. Compressor to have pressure lubrication to wall bearings, V-belt drive with guards, drive rated at 150% of rated horsepower, dripproof induction motors, and pressure switch. Furnish and install complete the steel storage tank specified. Tank to be complete with inlet, outlet, and automatic drain fitting, and shall be ASME construction of operation at 200 psi with the air compressors specified. Assembly shall be complete with high pressure safety controls, automatic controls, and all accessories required for a complete and operable system. Air compressors to be Quincy, Worthington, or Kellog American.

LEAD PANS AND WATERPROOF MEMBRANES:

Floor-mounted receptors shall be fitted with 24" x 24" 4-lb. lead or competite pan.

All floor drains which are not set in slab-on-grade shall be fitted with clamping collar and waterproof membrane.

Care should be taken not to clog weep holes. All pans will be tested by placing test plug in drain and filling with water overnight.

PART 3 - EXECUTION

PRODUCT HANDLING:

Protection: Use all means necessary to protect plumbing materials before, during, and after installation and to protect the installed work and materials of all other trades.

Replacements: In the event of damage, immediately make all repairs and replacements necessary to the approval of the Owner and at no additional cost to the Owner.

TESTING:

Furnish all required personnel and equipment and make all tests required to receive the approval of the Owner and all agencies having jurisdiction.

CLEANING UP:

Prior to acceptance of the building, thoroughly clean all exposed portions of the plumbing installation, removing all labels and all traces of foreign substance, using only a cleaning solution approved by the manufacturer of the plumbing item and being careful to avoid all damage to finished surfaces.

This is a C.O. - To original contract signed - 6/8
pursuing to Lee Brown agreement - same except amount was reduced.

SUBCONTRACT AGREEMENT

THIS AGREEMENT made at Salt Lake City, Utah, this 20 day of Feb., 19 86, by and between Paulsen Ellsworth Co. of Salt Lake, hereinafter referred to as the Contractor, and Brown Plumbing and Heating Co, Orem, Utah

hereinafter referred to as the Subcontractor. We bind ourselves our heir executors, administrators, successors, and assigns jointly and severally firmly by these presents.

WITNESSETH: That for and in consideration of the covenants herein contained, the Contractor and the Subcontractor agree as follows:

1. SCOPE OF WORK

That the work to be performed by the Subcontractor under the terms of this agreement consists of the following.

Furnishing of all labor and material, tools, implements, and equipment, scaffolding, permits, fees, etc., to do all of the following:

General and Supplementary Conditions
General Requirements as applicable to
Division 15 Mechanical
Site Utilities from 5' Outside of Building are Excluded
Note: 'As Built' drawings must be timely maintained, up to date on the job site and in an orderly manner.

EXHIBIT P-1

in strict accordance with the plans and specifications as prepared by MHt Architect and/or Engineer, for the construction of Cedar Hollow Jr. High

For Alpine School District Owner, for which construction the Contractor has the prime contract with the Owner, together with all addenda or authorized changes issued prior to the date of execution of this agreement.

When the Subcontractor does not install all material furnished under this Subcontract such material as is not installed is to be delivered F.O.B. N.A.

The Contractor and the Subcontractor agree to be bound by the terms of the prime contract agreement, construction regulations, general conditions, plans and specifications, and any and all other contract documents, if any there be, insofar as applicable to this subcontract agreement, and to that portion of the work herein described to be performed by the Subcontractor.

In the event of any doubt or question arising between the Contractor and the Subcontractor with respect to the plans and specifications the decision of the Architect and/or Engineer shall be conclusive and binding. Should there be no supervising architect over the work, then the matter in question shall be determined as provided in Section 7 of the agreement

2. PAYMENTS

The Contractor agrees to pay to the Subcontractor for the satisfactory completion of the herein described work the sum of One million three hundred twenty thousand nine hundred sixty dollars ($ 1,320,960.00)

in monthly payments of 90 % of the work performed in any preceeding month, in accordance with estimates prepared by the Subcontractor and as approved by the Contractor and MHT and Alpine School District ; such payments to be made as payments are received by the Contractor from the Owner covering the monthly estimates of the Contractor including the approved portion of the Subcontractor's monthly estimate.

In the event the Subcontractor does not submit to the Contractor such monthly estimates prior to the date of submission of the Contractor's monthly estimate, then the Contractor shall include in his monthly estimate to the Owner for work performed during the preceding month such amount as he shall deem proper for the work of the Subcontractor for the preceding month and the Subcontractor agrees to accept such approved portion thereof as his regular monthly payment, as described above.

Before final payment is made, the Subcontractor agrees to execute to the Contractor and/or the Owner a written guarantee for his work, agreeing to make good without cost to the Owner or Contractor any and all defects due to defective workmanship and/or materials which may appear within the period so established in the contract documents; and if no such period be stipulated in the contract documents, then such guarantee shall be executed for a period of one year from date of completion of the project. The Subcontractor further agrees to execute any special guarantees as provided by the terms of the Contract documents, prior to final payment.

Before issuance of the final payment the Subcontractor if required shall submit evidence satisfactory to the Contractor that all payrolls, material bills, and all known indebtedness connected with the Subcontractor's work have been satisfied

such detail as the Subcontractor and C 'ractor may agree upon or as required by the ner, and, if required, supported by such evidence as to its correctness a .e Contractor may direct. This schedule, when _pproved by the Contractor, shall be used as a basis for Certificates for Payment, unless it be found to be in error. In applying for payment, the Subcontractor shall submit a statement based upon this schedule.

If payments are made on account of materials not incorporated in the work but delivered and suitably stored at the site, or at some other location agreed upon in writing, such payments shall be in accordance with the terms and conditions of the Contract Documents.

The Subcontractor shall pay for all materials and labor used in, or in connection with, the performance of this contract, through the period covered by previous payments received from the Contractor, and furnish satisfactory evidence when requested by the Contractor, to verify compliance with the above requirements.

In the event it appears to the Contractor that the labor, material and other bills incurred in the performance of the work are not being currently paid, the Contractor may take such steps as it deems necessary to assure absolutely that the money paid with any progress payment will be utilized to the full extent necessary to pay labor, material and all other bills incurred in the performance of the work of Subcontractor. The Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owing by the Subcontractor to the Contractor; and in the event of any breach by the Subcontractor of any provision or obligation of this Subcontract, or in the event of the assertion by other parties of any claim or lien against the Contractor or Contractor's Surety or the premises arising out of the Subcontractor's performance of this Contract, the Contractor shall have the right, but is not required, to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage or expense therefrom, until the situation has been remedied or adjusted by the Subcontractor to the satisfaction of the Contractor. These provisions shall be applicable even though the subcontractor has posted a full payment and performance bond.

3. PROSECUTION OF WORK, DELAYS, ETC.

The Subcontractor shall prosecute his work with due diligence so as not to delay the work of the Contractor or other Subcontractors, and in the event that the Subcontractor neglects and/or fails to supply the necessary labor and/or materials, tools, implements, equipment, etc., in the opinion of the Contractor, then the Contractor shall notify the Subcontractor in writing setting forth the deficiency and/or delinquency, and five days after date of such written notice, the Contractor shall have the right if he so desires to take over the work of the Subcontractor in full, and exclude the Subcontractor from any further participation in the work covered by this agreement; or, at his option the Contractor may take over such portion of the Subcontractor's work as the Contractor shall deem to be in the best interest of the Contractor, and permit the Subcontractor to continue with the remaining portions of the work. Whichever method the Contractor might elect to pursue, the Subcontractor agrees to release to the Contractor, for his use only, without recourse, any materials, tools, implements, equipment, etc., on the site, belonging to or in the possession of the Subcontractor, for the benefit of the Contractor, in completing the work covered in this agreement; and the Contractor agrees to complete the work to the best of his ability and in the most economical manner available to him at the time. Any costs, including managerial and administrative services, incurred by the Contractor in doing any such portion of the work covered by this agreement shall be charged against any monies due or to become due under the terms of this agreement, and in the event the total amount due or to become due under the terms of this agreement shall be insufficient to cover the costs accrued by the Contractor in completing the work, then the Subcontractor and his sureties, if any, shall be bound and liable unto the Contractor for the difference.

The Subcontractor shall clean up and remove from the site as directed by the Contractor, all rubbish and debris resulting from his work. Failure to clean up rubbish and debris shall serve as cause for withholding further payment to Subcontractor until such time as this condition is corrected to the satisfaction of the Contractor. Also he shall clean up to the satisfaction of the inspectors, all dirt, grease marks, etc., from walls, ceilings, floors, fixtures, etc., deposited or placed thereon as a result of the execution of this subcontract. If the Subcontractor refuses or fails to perform this cleaning as directed by the Contractor, the Contractor shall have the right and power to proceed with the said cleaning, and the Subcontractor will on demand repay to the Contractor the actual cost of said labor plus a reasonable percentage of such cost to cover supervision, insurance, overhead, etc.

Excepting only, that the Subcontractor shall not be held liable for any delays arising out of Acts of God, strikes, embargoes, or other causes explicitly determined to be beyond the control of the Subcontractor; providing the Subcontractor notifies the Contractor in writing within (5) calendar days of the delay; except, that in the event that the Owner should assess any penalties against the Contractor as provided in the contract documents, then the Subcontractor shall be responsible for such portion of such penalty as may be directly attributable to him, regardless of the cause from which the delay occurred.

Should the proper workmanlike and accurate performance of any work under this contract depend wholly or partially upon the proper workmanlike or accurate performance of any work or materials furnished by the Contractor or other subcontractors on the project, the Subcontractor agrees to use all means necessary to discover any such defects and report same in writing to the Contractor before proceeding with his work which is so dependent; and shall allow to the Contractor a reasonable time in which to remedy such defects; and in the event he does not so report to the Contractor in writing, then it shall be assumed that the Subcontractor has fully accepted the work of others as being satisfactory and he shall be fully responsible thereafter for the satisfactory performance of the work covered by this agreement, regardless of the defective work of others.

The Subcontractor agrees to reimburse the Contractor for any and all liquidated damages that may be assessed against and collected from the Contractor by the Owner, which are attributable to or caused by the Subcontractor's failure to furnish the materials and perform the work required by this Subcontract within the time fixed in the manner provided for herein, and in addition thereto, agrees to pay to the Contractor such other or additional damages as the Contractor may sustain by reason of such delay by the Subcontractor. The payment of such damages shall not release the Subcontractor from his obligation to otherwise fully perform this Subcontract.

Whenever it may be useful or necessary to the Contractor to do so, the Contractor shall be permitted to occupy and/or use any portion of the work which has been either partially or fully completed by the Subcontractor before final

...and acceptance thereof by the Owner, but such use and/or occupation shall not relieve the Subcontractor of his guarantee of said work and materials nor of his obligation to make good at his own expense any defect in materials and workmanship which may occur develop prior to Contractor's release from responsibility to the Owner. Provided, however, the Subcontractor shall not be responsible for the maintenance of such portion of the work as may be used and/or occupied by the Contractor, nor for any damage thereto that is due to or caused by the sole negligence of the Contractor during such period of use.

Subcontractor shall be responsible for his own work, property and/or materials until completion and final acceptance of the Contract by the Owner, and shall bear the risk of any loss or damage until such acceptance and shall pay promptly for all materials and labor furnished to the project. In the event of loss or damage, he shall proceed promptly to make repairs, or replacement of the damaged work, property and/or materials at his own expense, as directed by the Contractor. Subcontractor waives all rights Subcontractor might have against Owner and Contractor for loss or damage to Subcontractor's work, property or materials.

It is agreed that the Subcontractor, at the option of the Contractor, may be considered as disabled from so complying whenever a petition in Bankruptcy or for the appointment of a Receiver is filed against him.

The Subcontractor assumes toward the Contractor all the obligations and responsibilities that the Contractor assumes toward the Owner. The Subcontractor shall indemnify the Contractor and the Owner against, and save them harmless from, any and all loss, damage, expenses, costs, and attorneys' fees incurred or suffered on account of any breach of the provisions or covenants of this contract.

Subcontractor agrees to fully comply with the Occupational Safety & Health Act of 1970 and any and all regulations issued pursuant thereto. Subcontractor as a term and condition of this subcontract shall keep and save the contractor harmless from any claims or charges of any kind by reason of subcontractor failing to fully comply with the act and regulations and agrees to reimburse the contractor for any fines, damages, or expenses of any kind incurred by the contractor by reason of the subcontractor's failure to comply.

No extension of time of this contract will be recognized without written consent of the Contractor which consent shall not be withheld unreasonably consistent with Article 6 of this Contract, subject to the arbitration provisions herein provided.

4. PERMITS, LICENSES, FEES, TAXES, ETC.

The Subcontractor shall, at his own cost and expense, apply for and obtain all necessary permits and licenses and shall conform strictly to the laws and ordinances in force in the locality where the work under the project is being done, insofar as applicable to the work covered by this agreement. The Subcontractor shall hold harmless the prime Contractor against liability by reason of the Subcontractor having failed to pay any Federal, State, County or Municipal taxes.

5. INSURANCE

The Subcontractor agrees to provide and maintain workmen's compensation insurance and to comply in all respects with the employment and payment of labor, required by any constituted authority having legal jurisdiction over the area in which the work is performed.

The Subcontractor agrees to carry comprehensive public liability and property damage insurance, and such other insurance as the Contractor might deem necessary, in amounts as approved by the Contractor, in order to protect the Contractor and Subcontractor against loss resulting from any acts of the Subcontractor, his agents, and/or employees.

The Subcontractor agrees to furnish evidence satisfactory to the Contractor, of such insurance, including copies of the policies, when requested to do so by the Contractor.

Unless otherwise provided herein, the Subcontractor shall have a direct liability for the acts of his employees and agents for which he is legally responsible, and the Subcontractor shall not be required to assume the liability for the acts of any others.

All insurance required hereunder shall be maintained in full force and effect in a company or companies satisfactory to Contractor, shall be maintained at Subcontractor's expense until performance in full hereof (certificates of such insurance being supplied by Subcontractor to Contractor), and such insurance shall be subject to requirement that Contractor must be notified by ten (10) days' written notice before cancellation of any such policy. In event of threatened cancellation for nonpayment of premium, Contractor may pay same for Subcontractor and deduct the said payment from amounts then or subsequently owing to Subcontractor hereunder.

6. CHANGES, ADDITIONS AND DEDUCTIONS

The Contractor may add to or deduct from the amount of work covered by this agreement, and any changes so made in the amount of work involved, or any other parts of this agreement, shall be by a written amendment hereto setting forth in detail the changes involved and the value thereof which shall be mutually agreed upon between the Contractor and the Subcontractor if such be possible; and if such mutual agreement is not possible then the value of the work shall be determined as provided in Section 7 of this agreement. In either event, however, the Subcontractor agrees to proceed with the work as changed when so ordered in writing by the Contractor so as not to delay the progress of the work, and pending any determination of the value thereof.

The Subcontractor agrees to make no claim for additional work outside the scope of this contract unless terms hereof shall be conclusive with respect of this agreement between the parties hereto. Claims for any extras shall be made within two weeks from the date of completion.

The Subcontractor agrees not to sublet, transfer or assign this agreement or any part thereof without the written consent of the Contractor.

7. DISPUTES

In the event of any dispute between the Contractor and the Subcontractor covering the scope of the work, the dispute shall be settled in the manner provided by the contract documents. If none be provided, or if there arises any dispute concerning matters in connection with this agreement, and without the scope of this work, then such disputes shall be settled by a ruling of a board of arbitration consisting of three members, one selected by the Contractor, one by the Subcontractor and the third member shall be selected by the first two members. The Contractor and Subcontractor shall bear the expense of their selected members respectively, but the expenses of the third member shall be borne by the party hereto requesting the arbitration in writing.

The Contractor and Subcontractor agree to be bound by the findings of any such boards of arbitration, finally and without recourse to any court of law.

TERMINATION OF CONTRACT

In the event the prime contr[illegible]between the Owner and the Contractor shoul[illegible] terminated prior to its completion, then the Contractor and Subcontr[illegible]r agree that an equitable settlement for work performed under this agreement prior to such termination, will be made as provided by the contract documents, if such provision be made; or, if none such exist, next by mutual agreement; or failing either of these methods, by arbitration as provided in Section 7.

9. IN ADDITION TO THE FOREGOING PROVISIONS THE PARTIES ALSO AGREE:

That the Subcontractor shall:

(1) During the performance of this subcontract, the Subcontractor agrees to not discriminate against any employee because of race, color, creed, national origin, age or sex. As outlined in the Equal Opportunity Clause of the Regulations of Executive Order 10925 of March 6, 1961 as amended by Executive Order 11246 of September 24, 1965. The executive orders and the respective regulations are made a part of this subcontract by reference.

(2) Subcontractor agrees to fully comply with the Occupational Safety & Health Act of 1970 and any and all regulations issued pursuant thereto. Subcontractor as a term and condition of this subcontract shall keep and save the contractor harmless from any claims or charges of any kind by reason of subcontractor failing to fully comply with the act and regulations and agrees to reimburse the contractor for any fines, damages, or expenses of any kind incurred by the contractor by reason of the subcontractor's failure to comply.

(3) And does hereby agree that the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

(4) Furnish periodic progress reports of the work as mutually agreed including the progress of materials or equipment under this Agreement that may be in the course of preparation or manufacture.

(5) Cooperate with the Contractor and other Subcontractors whose work might interfere with the Subcontractor's work and to participate in the preparation of coordinated drawings in areas of congestion as required by the Contract Documents, specifically noting and advising the Contractor of any such interference.

That the Contractor shall:

(6) Take necessary precaution to properly protect the finished work of other trades.

(7) Not issue or give any instructions, order or directions directly to employees or workmen of the Subcontractor other than to the persons designated as the authorized representative(s) of the Subcontractor.

(8) Give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights

That the Contractor and Subcontractor agree—

(9) This subcontract is solely for the benefit of the signatories hereto.

10. SURETY BOND

LB

The Subcontractor agrees to furnish to the Contractor, at the [redacted]contractor's expense, a corporate surety bond guaranteeing the faithful performance of this agreement and the payment of all labor and material bills in connection with the execution of the work covered by this agreement. The bond is to be written by a surety company approved by the Contractor, and in a form entirely satisfa:tory to the Contractor.

11. LABOR AGREEMENTS

It is hereby understood and agreed that for the work c[illegible]ered by this subcontract, the subcontractor is bound and will comply with all the terms and conditions of the labor agreements to which the general contractor is a party insofar as said labor agreements lawfully require subcontractors to be so bound.

12. SCHEDULES

The prime contract between the Contractor and the Owner allows a construction period of 700 (days, weeks, or months). It is the Contractor's present intention to complete the contract in 540 (days, weeks, or months). Subcontractor shall comply with the completion schedule of 540 (days, weeks, or months).

If Contractor for any reason does not maintain the 540 (days, weeks, or months) schedule but elects to use all or any portion of the [illegible] (days, weeks, or months) prime contract schedule, then Subcontractor shall comply with the Contractor's established schedule and make no claim for charges of any kind relating to changes in the construction schedule.

The Subcontractor acknowledges the receipt of a letter transmitting this subcontract agreement and agrees to the provisions outlined in that letter.

in witness whereof the parties hereto have executed this Agreement under seal, and day and year first above written.

Attest: _____ Subcontractor Brown Plumbing & Heating Inc

(Seal) By Lee Brown Pres
(Title)

Attest: _____ Contractor Paulsen Ellsworth Co.

(Seal) By [illegible]
(Title)

Paulsen Ellsworth Company Constructors
300 East 4500 South
Salt Lake City, Utah 84107 (801) 266 5575

Alpine School District
50 North Center
American Fork, Utah 84003

Dear Mr. Jacklin,

In accordance with Section 20 of the Supplementary Conditions on Cedar Hollow Jr. High, the following list in being submitted for your consideration as direct purchased materials:

Concrete	*CPC	Gross $	145,000
	P.O. Box 7356	Tax	7,560
	Salt Lake City, Ut 84107	Net	137,440
Rebar	Marathon Steel		91,535
	830 South 700 West		4,772
	Salt Lake City, Utah 84104		86,763
Masonry	Lehi Block		449,430
	c/o Doyle Hadfield		23,430
	2200 North 1100 West		426,000
	Lehi, Utah 84043		
Structural Steel	Western Ornamental Iron		86,532
	347 West 2500 North		4,512
	Logan, Utah 84321		82,020
Joist/Deck	Associated Specialties		209,263
	572 West 800 South		10,909
	Salt Lake City, Utah 84101		198,354
Rough Carpentry	*Butterfield Lumber		42,200
	375 North Main		2,200
	Midvale, Utah 84043		40,000
Finish Carpentry	Western Mill		89,127
	1350 West 3350 South		4,646
	Ogden, Utah		84,481
Roofing	Seppi Builders Supply Co.		116,050
	c/o Utah Tile and Roofing		6,050
	555 West 3900 South		110,000
	Thermal Systems		55,746
	3055 West 2100 South		2,906
	Salt Lake City, Utah 84119		52,840

EXHIBIT
P-5

Doors and Frames	Beacon Metals 3001 South 300 West Salt Lake City, Utah 84115	Gross $ Tax Net	100,000 5,213 94,787
Glass	Kawneer Company c/o Linford Glass P.O. Box 3148 Visala, California 93277		127,555 6,650 120,905
Wood Flooring	Horner Flooring Company c/o Ottley Floor P.O.Box 372 Dollar Bay, Michigan		27,187 1,417 25,770
Metal Lockers	Republic Lockers c/o Jemson Associates 5424 East Slanson Ave. Los Angeles, California 93277		47,950 2,500 45,450
Seating	Harvey Seating Company c/o R.A.Ridges Co. Dyer Street North Burwick, Maine 03906		47,611 2,482 45,129
Electrical	Electrical Supply 658 North State, Orem 84507 c/o JPM		261,795 13,648 248,147
	Evans Supply c/o JPM 509 West 300 North Salt Lake City, Utah 84116		35,343 1,843 33,500
	Simplex Time Recorder c/o JPM 555-B 3900 South Salt Lake City, Utah 84107		26,199 1,366 24,833
	Lassco Sound c/o JPM 509 West 300 North Salt Lake City, Utah 84116		62,087 3,237 58,850
Mechanical	Mountain Land Pipe and Plumbing c/o Brown Plumbing and Heating P.O. Box 10 Orem, Utah 84058		39,035 2,035 37,000
Totals		Gross Tax Net	$2,059,645 107,376 1,952,269

In the Mechanical and Drywall and Acoustical areas there will be some additional owner purchase materials forthcoming. It is estimated to total $320,000.

Sincerely,

Richard M. Ellsworth

Richard M. Ellsworth
Paulsen Ellsworth Co.

PURCHASE ORDER

BOARD OF EDUCATION

ALPINE SCHOOL DISTRICT

AMERICAN FORK, UTAH 84003

PURCHASE ORDER NUMBER MUST BE SHOWN ON ALL INVOICES, PACKAGES AND CORRESPONDENCE

DO # : [redacted]

47.

TO: LUNDQUIST SALES
1482 MAJOR STREET
SALT LAKE CITY, UT
84115

SHIP TO: ALPINE SCHOOL DISTRICT
ATTN: CEDAR HOLLOW JUNIOR HIGH
700 EAST CEDAR HOLLOW ROAD
LEHI, UT
84043
(000) 000-0000

DATE: 6/07/85 REQUISITION

REQUIRED DATE:

QTY.	DESCRIPTION	DISCOUNT	UNIT PRICE	TOTAL
	C/O BROWN PLUMBING			
1	LOT MATERIALS AS SPECIFIED IN DIVISION 15 MECHANICAL FOR CEDAR HOLLOW JR. HIGH SCHOOL, GENERAL AND SUPPLEMENTARY GENERAL CONDITIONS GENERAL REQUIREMENTS AS APPLICABLE TO THOSE MATERIALS.		29,706.00	29,706.0
	SEND INVOICE TO: BROWN PLUMBING AND HEATING, P.O. BOX 695, OREM, UTAH 84057.			
	DELIVERY INSTRUCTIONS AS PER PAULSEN ELLSWORTH CONSTRUCTION COMPANY.			
			TOTAL	29,706.0

AS PER YOUR BID AND SPECIFICATIONS

EXHIBIT
P-4

000125

RECEIVING RECORD

ITEM	QUAN. REC'D.	DATE RECEIVED	COMMENTS	ITEM	QUAN. REC'D	DATE RECEIVED	COMMENTS

Check No.
63085

ALPINE SCHOOL DISTRICT

AMERICAN FORK, UTAH 84003

MO	DAY	YR
11	08	85

97-179
1243

THIS WARRANT IS ISSUED ACCORDING TO LAW AND IS WITHIN THE LAWFUL DEBT LIMIT OF THE BOARD OF EDUCATION OF THE ALPINE SCHOOL DISTRICT

COMMERCIAL SECURITY BANK
OREM, UT. 84057

ACCOUNTS PAYABLE

EXACTLY 21,351 DOLLARS AND ND CENTS

PAY $ 21,351.00

PAY TO THE ORDER OF:
LUNDQUIST SALES
1482 MAJOR STREET
SALT LAKE CITY UT 84115

NOT NEGOTIABLE

63085

ALPINE SCHOOL DISTRICT
AMERICAN FORK UTAH 84003

Vo 49385 63085

ACCOUNT NUMBER	REQUISITION NUMBER	PURCHASE ORDER	INVOICE NUMBER	INVOICE AMOUNT	DISCOUNT	NET AMOUNT
4400.0461.0000.30.040		47206	5298	21,351.00		21,351.00

MO	DAY	YR
11	08	85

TOTAL
21,351.00

Lundquist SALES

PO #7206

Date	Prepared By
	Reviewed By

	DATE	INVOICE #	AMOUNT
1	10 28	5298	21351 00
2			
3		TOTAL	21351 00

OK to Pay $21,351.00
Richard M Ellsworth

OK to pay #21,351.00 as per attached invoice
Richard Ellsworth
12-4-85

LUNDQUIST SALES

1482 Major St. Salt Lake City, Utah 84115 Phone 801-487-5709

EQUIPMENT FOR AIR CONDITIONING — HEATING — POWER PLANTS — VENTILATING

№ 5298

INVOICE

IER ORDER NO.	DEPT NO.	SALESMAN	TERMS	OUR ORDER NO.	DATE
47206		LDL	Net 30 Days	4978	10-28-85

LD TO
Board of Education
Alpine School Dist. - Attn:Accts Payable Dept.
Am. Fork,
Utah 84003

SHIP TO
Alpine School Dist. %Cedar Hollow
Jr. High School - 700 Cedar Hollow
Rd., Lehi, Utah 84043

IIP VIA

F.O.B.

2	(UH) Airtherm HRW-180 unit heaters		
4	(CUH) Airtherm C-80 11WF1 2L cab. unit heaters		
16	(CUH) Airtherm 08-1L FCF-B cab. unit heaters		
15	(FCU) Airtherm 06-1L CPA fan coil units (S. 10/24 via Wescar)		
150	#700F Vent Rite air vents (S. 9/19 UPS)		
1	Lot Gerand Balvalve indicators & venturies (S. 9/23 UPS)		
1	Lot RP&C strainers (S. 9/16 Transcon)		$21,351.00

ok Lee Braun
10-29-85

Partial billing and shipment.

Check No.
65470

ALPINE SCHOOL DISTRICT

AMERICAN FORK, UTAH 84003

MO	DAY	YR
01	17	86

9-179
243

THIS WARRANT IS ISSUED ACCORDING TO LAW AND IS WITHIN THE LAWFUL DEBT LIMIT OF THE BOARD OF EDUCATION OF THE ALPINE SCHOOL DISTRICT

COMMERCIAL SECURITY BANK
OREM, UT. 84057

ACCOUNTS PAYABLE

EXACTLY 8,355 DOLLARS AND NO CENTS

PAY $ 8,355.00

PAY TO THE ORDER OF:

LUNDQUIST SALES
1482 MAJOR STREET
SALT LAKE CITY UT 84115

NOT NEGOTIABLE

65470

ALPINE SCHOOL DISTRICT
AMERICAN FORK UTAH 84003 VH 49385 65470

ACCOUNT NUMBER	REQUISITION NUMBER	PURCHASE ORDER	INVOICE NUMBER	INVOICE AMOUNT	DISCOUNT	NET AMOUNT
4400.0461.0000.30.040		47206	5424	8,355.00		8,355.00

MO	DAY	YR
01	17	86

TOTAL 8,355.00

000129

00000073

WINDQUIET EALES

PO 47706

Date	Accountant		Work Paper No.
	Reviewed By		

	DATE	INVOICE #	1 AMOUNT OWED TO PAY	2	3	4
1						
2	12-5	5424	8355 00			
3						
4		TOTAL	8355 00			
5						
6						
7						
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40						

LUNDQUIST SALES

1482 Major St. Salt Lake City, Utah 84115 Phone 801-487-5709

EQUIPMENT · FOR AIR CONDITIONING — HEATING — POWER PLANTS — VENTILATING

№ 5424

INVOICE

STOMER ORDER NO.	DEPT NO.	SALESMAN	TERMS	OUR ORDER NO.	DATE
47206		LDL	Net 30 Days	4979	12=5-85

SOLD TO
Alpine School Dist.
c/o Brown Plumbing
P. O. Box 695
Orem, UT 84057

SHIP TO
Same - Cedar Hollow Jr. HS

SHIP VIA Consolidated 11/29 from Clinton, Mass. **F.O.B.** dest.

1	Lot Standard Fin-Pipe fintube radiation		$8,355.00

ok Lu Brown
12-10-85

This completes this purchase order

000131

BOARD OF EDUCATION

ALPINE SCHOOL DISTRICT

AMERICAN FORK, UTAH 84003

ON ALL INVOICES, PACKAG
CORRESPONDENCE.

PO #: 52637

TO: MCGRAY
C/O A.A. MAYCOCK
P.O. BOX 30
SALT LAKE CITY, UT
84110

SHIP TO: ALPINE SCHOOL DISTRICT
ATTN: CEDAR HOLLOW JUNIOR HIGH
700 EAST CEDAR HOLLOW ROAD
LEHI, UT
84043
(000) 000-0000

DATE: 8/07/85 REQUISITION

REQUIRED DATE:

QTY.	DESCRIPTION	DISCOUNT	UNIT PRICE	TOTAL
1	LOT MATERIALS AS SPECIFIED IN DIVISION 15 MECHANICAL FOR CEDAR HOLLOW JR. HIGH SCHOOL, GENERAL AND SUPPLEMENTARY GENERAL CONDITIONS GENERAL REQUIREMENTS AS APPLICABLE TO THOSE MATERIALS.		45,828.00	45,828.
	SEND INVOICE TO: BROWN PLUMBING AND HEATING, P.O. BOX 695, OREM, UTAH 84057.			
	DELIVERY INSTRUCTIONS AS PER PAULSEN ELLSWORTH CONSTRUCTION COMPANY.			
			TOTAL	45,828.

AS PER YOUR BID AND SPECIFICATIONS

RECEIVING RECORD

ITEM	QUAN. REC'D	DATE RECEIVED	COMMENTS	ITEM	QUAN. REC'D.	DATE RECEIVED	COMMENTS

Check No

66549

ALPINE SCHOOL DISTRICT

AMERICAN FORK, UTAH 84003

MO	DAY	YR
02	14	86

97 1
12

THIS WARRANT IS ISSUED ACCORDING TO LAW AND IS WITHIN THE LAWFUL DEBT LIMIT OF THE BOARD OF EDUCATION OF THE ALPINE SCHOOL DISTRICT

COMMERCIAL SECURITY BANK
OREM UT 84057

ACCOUNTS PAYABLE

EXACTLY 45,828 DOLLARS AND NO CENTS.

PAY $ 45,828.00

PAY TO THE ORDER OF.
MCQUAY
C/O A.A. MAYCOCK
P.O. BOX 36
SALT LAKE CITY UT 84110

NOT NEGOTIABLE

66549

ALPINE SCHOOL DISTRICT
AMERICAN FORK UTAH 84003 V# 52537 66549

ACCOUNT NUMBER	REQUISITION NUMBER	PURCHASE ORDER	INVOICE NUMBER	INVOICE AMOUNT	DISCOUNT	NET AMOUNT
4400.0461.0000.30.040		47207	56 8545	45,828.00		45,828.0

MO	DAY	YR
02	14	86

TOTAL 45,828.0

000133

00000077

DO 47207

McQUAY

FORM 204 USA

		INVOICE #	AMOUNT		
1					
2	1223	568545	45,828.00		
3					
4		TOTAL TO PAY	45,828.00	OK TO PAY	RMC
5					
6					
7			45,828.00		
8		Authorization to Pay DR HAROLD JACKLIN			
9		Date 2-12-86			
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RECEIVED
FEB 11 1986
ALPINE SCHOOL DISTRICT

McQUAY

INVOICE

PLEASE REMIT TO: PO BOX 9271, CHICAGO, ILL. 60675

MANUFACTURERS OF AIR CONDITIONING • HEATING • REFRIGERATING • ICE MAKING EQUIPMENT

INVOICE DATE	INVOICE NO	G O NO
12/23/85	568545	941412

CUSTOMER NO	CUSTOMER P O NUMBER	DEST CODE	F O B SHIPPING POINT	TERMS	CODE
13587003	47207	43025	STAUNTON, VA.	NET 30 DAYS	01

ROUTING	PPD	COLL	B/L NUMBER	SHIP DATE	END USE
CONSOLIDAT	X		40005	12/06/85	08

SOLD TO:

UT-AF ALPINE SCHOOLS DIST.
ACCOUNTS PAYABLE
50 NORTH CENTER
AMERICAN FORK UT 84003

SHIP TO: (Same as "SOLD TO" unless shown)

ALPINE SCHOOL DISTRICT
% CEDAR HOLLOW JR HIGH
700 EAST CEDAR HOLLOW ROAD
LEHI, UT 84043

ZIP CODE 84043

ITEM	QUANTITY	TYPE	MODEL NUMBER / DESCRIPTION	UNIT PRICE	TOTAL
10	1	X	PEH063J CENTRIFUGAL CHILLER - HERMETIC NOTE: ACTUALLY SHIPPED 12-6-85 BUT NEVER INVOICED		$45828.00

RECEIVED
JAN 2 1986
ALPINE SCHOOL DISTRICT

ok Lee Brown
1-10-86

YOUR ORDER FOR THE FOREGOING ITEMS WAS ACCEPTED UPON THE EXPRESS CONDITION THAT YOU AGREED TO THE TERMS AND CONDITIONS APPEARING ON THE FACE AND REVERSE SIDE HEREOF. PAST DUE ACCOUNTS SUBJECT TO INTEREST CHARGE.

THANK YOU

[ ] PARTIAL [XX] COMPLETE

000135

00000079

SCHEDULE 2

1/2

BROWN PLUMBING & HEATING, INC

INVOICE CHARGED BACK BY ALPINE SCHOOL DIST.

1/1/84 TO 12/31/85

OWNER: PURCHASED CEDAR HOLLOW JR HIGH

MECHANICAL LEAK

Date Prepared / Reviewed

EXHIBIT P-8

DATE 1985	CO. / INVOICE #	AMOUNT	CK #	DATE	P.O. #	P.O. AMOUNT
8-6-85	THERMAL EQ. / 1977	1750.00	59720		46915	36094
7-19-85	MOUNTAIN LAND PIPE / 17924	500.78	59328	8/26/85	46911	37000
	" 17923	325.05	✓		✓	✓
	" 17922	1504.13	✓		✓	✓
	" 17921	718.59	✓		✓	✓
	" 17920	950.12	✓		✓	✓
	" 17919	850.55	✓		✓	✓
	" 17918	1457.00	✓		✓	✓
	" 17917	612.49	✓		✓	✓
	" 17916	2355.03	✓		✓	✓
7-15-85	PRECISION GLAS 0536	1408.00	70863	9/16/85		—
9-3	LAWSON 11164	1753.92	61946	10/11/85	47205	—
9-9	THERMAL EQ. 2076	110.00	62055	10/11/85	46911	30094
9-9	" 2074	5000.00	✓		✓	✓
9-9	" 2077	1620.00	✓		✓	✓
8-19	" 2075 1475.50	760.00	✓		✓	✓
8-18	" 2041	3000.00	✓		✓	✓
8-16	" 2040	950.00	✓		✓	✓
8-16	" 2026	310.00	✓		✓	✓
8-16	" 2027	2800.00	✓		✓	✓
9-20	E.J. BARTELL CO. 29-74970	1536.00	61850	10/11/85	48154	—
10-4	THERMAL EQUIP 2156	672.00	63199		46915	30094
9-27	" 2141	258.00	✓		✓	+ 5000
10-16	" 2178	450.00	✓		✓	✓
10-23	" 2206	235.00	✓		✓	✓
10-28	LUNDQUIST SALES 5298	2135.00	63085	11/8/85	47206	30000
10-11	BENTON CORP 24917	3900.00	62956	11/8/85	46913	—
9-20	LAWSON 13057	6331.57	63072	11/8/85	47205	—
9-20	" 13055	86.52	✓		✓	—
9-18	" 13056 1513.03	393.75	✓		✓	—
9-26	" 13790	130.95	✓		✓	—
10-10	" 15347	188.24	✓		✓	—
10-8	GB 5060-00 BIL-K-CORK CO.	8349.00	63094	11/5/85	47203	40466
10-22	GB 5060-01 "	1800.00	✓		✓	✓
11-22	THERMAL EQUIP 2265	9269.00	64551		46914	39220
11-18	" 2315	875.00	✓		✓	✓
11-13	" 2290	6000.00	✓		✓	✓
11-13	" 2289	1370.00	✓		✓	✓
11-1	" 2242	90.00	✓		✓	✓

SCHEDULE 2 1

BROWN PLUMBING & HEATING, INC.

INVOICES CHARGED BACK TO ALPINE SCHOOL DIST. 2/2

1/1/84 TO 12/31/84

OVER DISCHARGED.. CEDAR MOUNTAIN HIGH

MECHANICAL LEN!

Date | Prepared By | Reviewed By

DATE 1985		1 AMOUNT	2 TOTAL CK #	DATE	3 SALES TAX P.O. #		4 PO AMOUNT
0 24	LAWSON .16704	176 78	64447	12/13/85	47205	—	
1 25	TENTCOL .17311-510	70000 00	64550	12/13/85	47204		70000 —
1 31	AA MAYCOCK 93 5060-02	55177 00	65478		47203		40466 —
1-18	GB. SC 60-03	13400 00	✓		✓		✓
2-4	GB " 60-04	10400 00	✓		✓		✓
2 5	Lundquist SALES 5424	3355 20	65470	1/17/86	47206		3000 —
1-1	Lawson Sales 20973	32118 36	65461	1/17/86	47205	—	
2 5	" 20974	18000 00	✓		✓	—	
2 10	Easton Corp 119673	50 00					
2 2	" 174267	15800 00					
2 30	THERMAL EQ 2473	4400	71237		46914		3922 —
2 23	" 2507	10551 00	✓		✓		✓
2 8	" 2521	4000 00	✓		✓		✓
2 11	Lawson 21523	68 25	66531	2/14/86	47205	—	
2 26	22891	5817 00	✓		✓	—	
1 13	" 24095	72778 57	✓		✓	—	
3	McQuay CC8545	45828 00	66549	2/14/86	47207		4585 8 —
3 1	Benton 117068	5472 00					
3	Lawson 26216	899 14	67472	2/17/86	47205	—	
2 22	ARROW UNITED 24197	16800 00	67400	2/17/86	46912		
1 18	THERMAL EQ. 2707	6000 00	67529	2/19/86	46915		3009.4 —
1 18	ENERGY MANAGEMENT 2085	16828 00	67446	2/17/86			
2 4	THERMAL EQ 2780	22715 00	24623	4/28/86	46915		3009.4 —
2 26	BENTON CORP. 121592	12249 00	21147	4/28/86	46913		
2 27	LAWSON 27398	140 74	62284	4/28/86	47205	—	
	" 27891	1270 60	03897	5/22/86	✓	—	
2 25	LAWSON 22720	9504 80	13759	4.73	~~2695.55~~	—	
2 20	LAWSON 34315, 35668, 35669	25216 63	04285	6/24/86	47205	(ADDED)	
	TOTAL TO ENTER ✓		~~1356.73~~				
			46511 10176				
		Per audit	Per Invoice				
	AA MAYCOCK ⓪	39466 00	39466 00				
	LAWSON ② ✓	40516 54	17103				
	THERMAL EQ. ③	73714 00					
	MT Land Pipe Ⓐ	3599.2 14					
	Pace Glass Ⓒ	14080 00					
	E.J. Bentley Co Ⓑ	15360 00					

ties from contracting that, as between themselves, the seller of materials will pay the taxes due and a regulation by the commission prohibiting such action would not nullify the contract between the parties, there being no statutory prohibition. Dayton v. Gibbons & Reed Co., 12 Utah 2d 296, 365 P.2d 801 (1961).

Nature of tax.

Sales tax is not tax upon property; this chapter imposes the tax on the transaction. The amount of consideration involved in the sale or transaction is the measure to which the rate is applied. W.F. Jensen Candy Co. v. State Tax Comm., 90 Utah 359, 361, 61 P.2d 629, 107 A.L.R. 261 (1936); Union Stock Yards v. State Tax Comm., 93 Utah 174, 71 P.2d 542 (1937).

The former Use Tax Act of 1937 was an excise tax imposed upon the privilege of storing or using property within the state, and liability for the tax was imposed upon the person so storing or using the property. Such person was the one ultimately responsible for the tax. He could discharge the liability though by payment of the tax to the retailer from whom he purchased the goods. Ford J. Twaits Co. v. Utah State Tax Comm., 106 Utah 343, 148 P.2d 343 (1944).

The sales tax in this state is a tax on the "consumer." E.C. Olsen Co. v. State Tax Comm., 109 Utah 563, 168 P.2d 324 (1946); Ralph Child Constr. Co. v. State Tax Comm., 12 Utah 2d 53, 362 P.2d 422 (1961).

The state can collect the sales tax from the ultimate comsumer where the retailer fails to collect the tax and fails to report the sale and where the state did not learn of the sale until after the retailer was out of business. Ralph Child Constr. Co. v. State Tax Comm., 12 Utah 2d 53, 362 P.2d 422 (1961).

Purpose of use tax.

The obvious purpose of the former Use Tax Act was to impose a tax on the use in this state of property the sale of which, because that sale took place outside the state, was beyond the reach of the Utah Sales Tax Act. Union Portland Cement Co. v. State Tax Comm., 110 Utah 152, 176 P.2d 879 (1947).

Redress from assessment.

Procedure set forth in this chapter itself is the exclusive method of seeking redress from an assessment. Pacific Intermountain Express Co. v. State Tax Comm., 7 Utah 2d 15, 316 P.2d 549 (1957).

COLLATERAL REFERENCES

Am. Jur. 2d. — 68 Am. Jur. 2d Sales and Use Taxes §§ 1 to 243.

C.J.S. — 85 C.J.S. State and Local Taxation §§ 1231 to 1257.

A.L.R. — Motor vehicles, sales or use tax on motor vehicle purchased out of state, 45 A.L.R.3d 1270.

Applicability of sales tax to "tips" or service charges added in lieu of tips, 73 A.L.R.3d 1226.

Sales and use taxes on leased tangible personal property, 2 A.L.R.4th 859.

Freight, transportation, mailing, or handling charges billed separately to purchaser of goods subject to sales or use taxes, 2 A.L.R.4th 1124.

Cable television equipment or services as subject to sales or use tax, 5 A.L.R.4th 754.

Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 A.L.R.4th 1068.

Eyeglasses or other optical accessories as subject to sales or use tax, 14 A.L.R.4th 1370.

Use, or privilege tax on sales of, or revenues from sales of, advertising space or services, 40 A.L.R.4th 1114.

Key Numbers. — Taxation ⇐ 1201 to 1345.

59-12-102. Definitions.

As used in this chapter:

(1) "Commercial consumption" means the use connected with trade or commerce and includes:

(a) the use of services or products by retail establishments, hotels, motels, restaurants, warehouses, and other commercial establishments;

(b) transportation of property by land, water, or air;

(c) agricultural uses unless specifically exempted under this chapter; and

(d) real property contracting work.

(2) "Commission" means the State Tax Commission.

(3) "Component part" includes:

(a) poultry, dairy, and other livestock feed, and their components;
(b) baling ties and twine used in the baling of hay and straw;
(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and
(d) feed, seeds, and seedlings.

(4) (a) "Medicine" means:
(i) insulin, syringes, and any medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a physician, surgeon, or podiatrist;
(ii) any medicine dispensed to patients in a county or other licensed hospital if prescribed for that patient and dispensed by a registered pharmacist or administered under the direction of a physician; and
(iii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic.
(b) "Medicine" does not include:
(i) any auditory, prosthetic, opthalmic, or ocular device or appliance; or
(ii) any alcoholic beverage.

(5) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(6) "Purchase price" means the amount paid or charged for tangible personal property or any other taxable item or service under Subsection 59-12-103(1), excluding only cash discounts taken or any excise tax imposed on such purchase price by the Federal Government.

(7) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(8) (a) "Retail sale" means any sale within the state of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), other than resale of such property item, or service by a retailer or wholesaler to a user or consumer.
(b) "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if such sales have an average monthly sales value of $125 or more.

(9) "Retailer" means a person engaged in a regularly organized retail business in tangible personal property or any other taxable item or service under Subsection 59-12-103 (1), and selling to the user or consumer and not for resale, and includes commission merchants, auctioneers, and all persons regularly engaged in the business of selling to users or consumers within the state. "Retailer" does not include farmers, gardeners, stockmen, poultrymen, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit. When in the opinion of the commission it is necessary for the efficient administration of this chapter to regard salesmen, representatives, peddlers, or can-

vassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers, the commission may regard them and may regard the dealers, distributors, supervisors, or employers as retailers for purposes of this chapter.

(10) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), for a consideration. It includes:

(a) installment and credit sales;

(b) any closed transaction constituting a sale;

(c) any sale of electrical energy, gas, services, or entertainment taxable under this chapter;

(d) any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; and

(e) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if an outright sale were made.

(11) "State" means the state of Utah, its departments, and agencies.

(12) "Storage" means any keeping or retention of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(13) (a) "Tangible personal property" means:

(i) all goods, wares, merchandise, produce, and commodities;

(ii) all tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

(iii) water in bottles, tanks, or other containers; and

(iv) all other physically existing articles or things, including property severed from real estate.

(b) "Tangible personal property" does not include:

(i) real estate or any interest therein or improvements thereon;

(ii) bank accounts, stocks, bonds, mortgages, notes, and other evidence of debt;

(iii) insurance certificates or policies;

(iv) personal or governmental licenses;

(v) water in pipes, conduits, ditches, or reservoirs;

(vi) currency and coinage constituting legal tender of the United States or of a foreign nation; and

(vii) all gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any nation, with a gold, silver, or platinum content of not less than 80%.

(14) (a) "Use" means the exercise of any right or power over tangible personal property under Subsection 59-12-103(1), incident to the ownership or the leasing of that property, item, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of that property in the regular course of business and held for resale.

(15) "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable item or service under Subsection 59-12-103(1), or to whom such payment or consideration is payable.

History: L. 1933, ch. 63, § 2; 1933(2nd S.S.), ch. 20, § 1; 1935, ch. 91, § 1; 1937, ch. 110, § 1; 1939, ch. 103, § 1; C. 1943, 80-15-2; L. 1943, ch. 92, § 1; 1949, ch. 83, § 1; 1957, ch. 125, § 1; 1963, ch. 140, § 1; 1969, ch. 187, § 1; 1969 (1st S.S.), ch. 14, § 1; 1971, ch. 152, § 1; 1973, ch. 151, § 1; 1981, ch. 239, § 1; 1986, ch. 55, § 2; C. 1953, 59-15-2; renumbered by L. 1987, ch. 5, § 21.

Amendment Notes. — The 1986 amendment, effective July 1, 1986, divided former Subsection (5) into present Subsection (5) and Subsection (6) and renumbered the following subsections accordingly; deleted "The term" at the beginning of Subsection (6); and, in Subsection (11) added "price" following "Purchase", inserted "excise" before "tax" and "on such price" following "imposed", and substituted "chapter" for "act".

The 1987 amendment, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-15-2; deleted former Subsections (3), (4) and (9) to (12), which defined "wholesaler," "wholesale," "tax," "admission," "purchase price" and "motion picture exhibitor," respectively; added present Subsections (1), (2), (4), (7) and (11) to (15); redesignated former Subsections (7), (1), (11), (6), (5) and (8) as present Subsections (3), (5), (6), (8), (9) and (10)(e), respectively; in Subsection (3), deleted the former second paragraph, relating to purchases of services as defined in Subsection 59-15-4(b), and rewrote and restructured the remaining paragraph into introductory language and Subsections (3)(a) to (3)(d); rewrote Subsections (5) and (6); in Subsection (8), designated the formerly undesignated first sentence as Subsection (8)(a) and the former undesignated second sentence as Subsection (8)(b), and rewrote the contents thereof; in Subsection (9), divided the formerly undivided language into the first two sentences, added the last sentence, substituted "'Retailer' does not include farmers, gardeners, stockmen, poultrymen, or other growers" for "but the term 'retailer' does not include farmers, gardeners, stockmen, poultrymen or other growers" in the second sentence and, in the first sentence, substituted "engaged in" for "doing" and inserted "or any other taxable item or service under Subsection 59-12-103(1)"; deleted the former last sentence in Subsection (10), relating to an even exchange of tangible personal properties; rewrote and restructured the former first two sentences of former Subsection (2) into an introductory paragraph and Subsections (10)(a) to (10)(d); and, in Subsection (10)(e), substituted "any transaction under which" for "When" and deleted "such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor or leasor upon the rentals paid, regardless of the duration of the lease or contract" at the end.

Compiler's Notes. — Former § 59-16-102, as amended by Laws 1986, ch. 55, § 8, contained provisions similar to this section.

Retrospective Operation. — Laws 1987, ch. 5, § 41 provides: "This act has retrospective operation to January 1, 1987."

Cross-References. — State Tax Commission, § 59-1-201 et seq.

NOTES TO DECISIONS

Analysis

Component part.
Construction.
Construction contracts.
Discharge of tax.
Isolated and occasional sale.
Liability for tax.
Lease or contract.
Manufacturing equipment.
Material for parent corporation.
Nonresident purchaser.
Nonresident seller.
Obligation to pay tax.

59-12-103. Sales and use tax base — Rate.

(1) There is levied a tax on the purchaser for the amount paid or charged for the following:

(a) retail sales of tangible personal property made within the state;

(b) amount paid to common carriers or telephone or telegraph corporations as defined by § 54-2-1, whether the corporations are municipally or privately owned, for all transportation, telephone service, or telegraph service;

(c) gas, electricity, heat, coal, fuel oil, or other fuels sold or furnished for commercial cunsumption;

(d) gas, electricity, heat, coal, fuel oil, or other fuels sold or furnished for residential use;

(e) meals sold;

(f) admission to any place of amusement, entertainment, or recreation, including seats and tables reserved or otherwise, and other similar accommodations;

(g) services for repairs or renovations of tangible personal property or services to install tangible personal property in connection with other tangible personal property;

(h) cleaning or washing of tangible personal property;

(i) tourist home, hotel, motel, or trailer court accommodations and services for less than 30 consecutive days;

(j) laundry and dry cleaning services;

(k) leases and rentals of tangible personal property if the property situs is in this state, if the lessee took possession in this state, or if the property is stored, used, or otherwise consumed in this state; and

(l) tangible personal property stored, used, or consumed in this state.

(2) Except for Subsection (1)(d), the rates of the tax levied under Subsection (1) shall be:

(a) 5-3/32% through December 31, 1989; and

(b) 5% from and after January 1, 1990.

(3) The rates of the tax levied under Subsection (1)(d) shall be:

(a) 2-3/32% through December 31, 1989; and

(b) 2% from and after January 1, 1990.

History: L. 1933, ch. 63, § 4; 1933 (2nd S.S.), ch. 20, § 1; 1937, ch. 111, § 1; C. 1943, 80-15-4; L. 1943, ch. 93, § 1; 1959, ch. 113, § 1; 1961, ch. 148, § 1; 1963, ch. 140, § 1; 1965, ch. 126, § 1; 1965, ch. 127, § 1; 1969, ch. 187, § 2; 1969 (1st S.S.), ch. 14, § 2; 1973, ch. 153, § 1; 1975, ch. 179, § 1; 1977, ch. 220, § 1; 1983, ch. 258, § 4; 1983, ch. 270, § 1; 1983 (1st S.S.), ch. 6, § 1; 1984, ch. 56, § 1; 1985, ch. 172, § 2; 1986, ch. 37, § 2; 1986 (2nd S.S.), ch. 4, § 2; C. 1953, 59-15-4; renumbered by L. 1987, ch. 5, § 23; 1987, ch. 148, § 6; 1987, ch. 221, § 1.

Amendment Notes. — The 1983 amendment by Chapter 258, inserted provisions for a 1/8% increase in sales tax from July 1, 1983, through June 30, 1987; and added the final paragraph.

The 1983 amendment by Chapter 270 inserted the exemption on the sale of currency and coinage and on gold, silver, and platinum ingots, bars, medallions and coins in Subsection (a).

The 1983 (1st S.S.) amendment added 1/2% to the sales tax rates herein for the period beginning October 1, 1983, and ending September 30, 1984.

The 1984 amendment added 1/2% to the sales tax rates herein beginning October 1, 1984.

The 1985 amendment substituted "June 30, 1986, (ii) 4 38/64% from July 1, 1986, through December 31, 1989, and (iv) 4 1/2% from January 1, 1990" for "June 30, 1987 and (ii) 4 1/2% from July 1, 1987" in Subsection (a); substituted "June 30, 1986, 4 38/64% from July 1, 1986, through December 31, 1989, and 4 1/2% from January 1, 1990" for "June 30, 1987 and 4 1/2% from July 1, 1987" in Subsections (b)(1), (b)(2)

and (c) through (h); substituted "4⅝%" for "Four and five-eighths percent" at the beginning of Subsections (b)(1), (b)(2) and (c); substituted "1⅝%" for "One and five-eighths percent" at the beginning of Subsection (b)(3); substituted "June 30, 1986, 1 38/64% from July 1, 1986, through December 31, 1989, and 1½% from January 1, 1990" for "June 30, 1987 and 1½% from July 1, 1987" in Subsection (b)(3); inserted "(i)" preceding "a ⅛% increase" in the second paragraph of Subsection (h); substituted "1986" for "1987" in the second paragraph of Subsection (h); and added "and (ii) a 6/64% increase in sales tax from July 1, 1986, through December 31, 1989, shall be deposited in the Water Resources Conservation and Development Fund." at the end of the second paragraph of Subsection (h).

The 1986 amendment, effective July 1, 1986, designated the previously undesignated introductory paragraph as Subsection (1) and redesignated other provisions of the section accordingly, changed the date references near the beginning of each subsection, rewrote present Subsection (2), which formerly read "The revenue collected from (i) a ⅛ percent increase in sales tax from July 1, 1983, through June 30, 1986, shall be deposited in the general fund restricted-executive reserve account, and (ii) a 6/64 percent increase in sales tax from July 1, 1986, through December 31, 1989, shall be deposited in the water resources conservation and development fund," added Subsection (3), and made other minor changes.

The 1986 (2nd S.S.) amendment, effective August 8, 1986, deleted "and" following "June 30, 1986" and substituted "(iii)" for "(iv)" in the first sentence of Subsection (1)(a), substituted "December 31, 1989" for "June 30, 1987" and "January 1, 1990" for "July 1, 1987" throughout the section, substituted "General Fund" for "General Fund Restricted Executive Reserve Account" at the end of Subsection (2), and deleted Subsection (3).

The 1987 amendment by Chapter 5, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-15-4; deleted former Subsection (2), relating to the deposit of revenues in the General Fund; added present Subsections (2) and (3); rewrote the introductory language of Subsection (1), which read "There is levied and there shall be collected and paid"; in Subsection (1)(a), deleted the former last two sentences, relating to exemptions, and rewrote the remaining language; deleted the former introductory language of Subsection (1)(b), which read "A tax equivalent to the following percentages of the amount paid"; redesignated former Subsection (1)(b)(i) as present Subsection (1)(b) and rewrote the contents thereof; redesignated former Subsection (1)(b)(ii) as present Subsection (1)(c) and, in that subsection, deleted the former second sentence, relating to the exemptions of certain fuels, and rewrote the remaining language; redesignated former Subsections (1)(b)(iii) and (1)(c) to (1)(e) as present Subsections (1)(d) to (1)(g), respectively, and rewrote the contents thereof; inserted present Subsection (1)(h); redesignated former Subsection (1)(f) as present Subsection (1)(i) and, in that subsection, deleted the former second sentence, relating to certain exemptions, and rewrote the remaining language; redesignated former Subsections (1)(g) and (1)(h) as present Subsections (1)(j) and (1)(k) and rewrote the contents thereof; and inserted present Subsection (1)(l).

The 1987 amendment by Chapter 148, effective March 16, 1987, substituted the present language of Subsection (1)(b) for "services provided by common carriers or telephone or telegraph corporations as defined by § 54-2-1" (as rewritten by Chapter 5).

The 1987 amendment by Chapter 221, effective March 31, 1987, amended Chapter 5 as follows: in Subsection (2)(a), substituted "5-3/32%" for "4-38/64% from July 1, 1986"; in Subsection (2)(b), substituted "5%" for "4-½%"; in Subsection (3)(a), substituted "2-3/32%" for "1-38/64% from July 1, 1986"; and in Subsection (3)(b), substituted "2%" for "1½%".

Compiler's Notes. — Former § 59-16-3, as amended by Laws 1986 (2nd S.S.), ch. 4, § 3, contained provisions similar to this section.

Retrospective Operation. — Laws 1987, ch. 5, § 41 provides: "This act has retrospective operation to January 1, 1987."

Laws 1987, ch. 148, § 8 provides: "This act has retrospective operation to January 1, 1987."

Cross-References. — County or municipal sales and use tax, provisions of ordinance, § 59-12-204.

Sales of artificial limbs.

The taxpayer's sales of artificial limbs involved the selling of personal property and the personal services rendered were merely incidental thereto. Such business is subject to the sales tax. McKendrick v. State Tax Comm'n, 9 Utah 2d 418, 347 P.2d 177 (1959).

Street railway fares.

Fares collected from integrated city-wide transportation system employing trolley cars and motor buses held not subject to sales tax under 1933 version of this section exempting "street railway fares." Utah Light & Traction Co. v. State Tax Comm., 92 Utah 404, 68 P.2d 759 (1937); Lewis v. Utah State Tax Comm., 118 Utah 72, 218 P.2d 1074 (1950).

The term "street railway fares," as used in this section, applies only to urban street transportation systems where passengers are carried from one point to another within the limits of a city, and not to systems which are predominantly interurban; thus, motorbus line which had authority to do only an interurban business between downtown Salt Lake City and Kearns, was liable for tax on fares. Lewis v. Utah State Tax Comm., 118 Utah 72, 218 P.2d 1074 (1950) (decided prior to 1987 amendments).

Tourist accommodations and services.

The provisions of Subsection (1)(i) apply to all those who engage in the rental of lodgings of the short period or temporary stopover type by whatever title the place may be called and this interpretation means that it applies uniformly to all in the same class and renders it invulnerable to attack as being discriminatory. Howe v. State Tax Comm., 10 Utah 2d 362, 353 P.2d 468 (1960).

Valuation of trade-ins.

Tax commission's regulation providing that the basis of exchanged property, for tax purposes, includes trade-in value in money, instead of its fair market value, does not violate this section. Vrontikis Bros. v. Utah State Tax Comm., 9 Utah 2d 60, 337 P.2d 434 (1959) (decided prior to 1987 amendment).

Vendor's duty to collect tax.

Vendor's status under this chapter is that of a collector, rather than a taxpayer. Bird & Jex Co. v. Anderson Motor Co., 92 Utah 493, 69 P.2d 510 (1937).

It is duty of vendor to collect the tax from vendee and remit same with proper records to tax commission. E.C. Olsen Co. v. State Tax Comm., 109 Utah 563, 168 P.2d 324 (1946).

COLLATERAL REFERENCES

Am. Jur. 2d. — 68 Am. Jur. 2d Sales and Use Taxes §§ 128 to 138, 230, 231.

C.J.S. — 85 C.J.S. State and Local Taxation § 1245.

Key Numbers. — Taxation ⇐ 1231 et seq.

59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

(1) sales of motor fuels and special fuels subject to a Utah state excise tax under Chapter 13, Title 59;

(2) sales to the state, its institutions, and its political subdivisions;

(3) sales of food, beverage, and dairy products from vending machines in which the proceeds of each sale do not exceed $1 if the vendor or operator of the vending machine reports an amount equal to 120% of the cost of such items as goods consumed;

(4) sales of food, beverage, dairy products, similar confections, and related services to commercial airline carriers for in-flight consumption;

(5) sales of parts and equipment installed in aircraft used primarily in scheduled interstate or foreign commerce;

(6) sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded videotapes, by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster;

(7) sales made through coin-operated laundry machines, coin-operated dry cleaning machines, or coin-operated car washes;

(8) sales made to or by religious or charitable institutions in the conduct of their regular religious or charitable functions and activities;

(9) sales of vehicles of a type required to be registered under the motor vehicle laws of this state which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to the borders of this state;

(10) sales of medicine;

(11) sales or use of property, materials, or services used in the construction of or incorporated in pollution control facilities allowed by §§ 26-13-26 through 26-13-30;

(12) sales or use of property which the state is prohibited from taxing under the Constitution or laws of the United States or under the laws of this state;

(13) sales of meals served by schools, churches, or charitable institutions;

(14) isolated or occasional sales of persons not regularly engaged in business, except the sale of vehicles required to be registered under the motor vehicle laws of this state;

(15) sales or leases of materials, machinery, equipment, and services of any person in excess of $500,000 for any tax year used in the new construction, expansion, or modernization (excluding normal operating replacements as determined by the commission) of any mine, mill, reduction works, smelter, refinery (except oil and gas refineries), synthetic fuel processing and upgrading plant, rolling mill, coal washing plant, or melting facility in Utah commencing after July 1, 1984, and ending June 30, 1989;

(16) sales or leases of machinery and equipment purchased or leased by a manufacturer for use in new or expanding operations (excluding normal operating replacements, which includes replacement machinery and equipment even though they may increase plant production or capacity, as determined by the commission) in any manufacturing facility in Utah. Normal operating replacements shall include replacement machinery and equipment which increases plant production or capacity. Manufacturing facility means an establishment described in SIC Codes 2000 to 3999 of the Standard Industrial Classification Manual 1972, of the federal Executive Office of the President, Office of Management and Budget. For purposes of this subsection, the commission shall by rule define "new or expanding operations" and "establishment";

(17) sales of tooling, special tooling, support equipment, and special test equipment used or consumed exclusively in the performance of any aerospace or electronics industry contract with the United States Government or any subcontract under that contract, but only if under the terms of that contract or subcontract title to the tooling and equipment is vested in the United States Government, as evidenced by a government identification tag placed on the tooling and equipment or by listing on a government-approved property record if a tag is impractical;

(18) intrastate movements of freight and express or street railway fares;

(19) sales of newspapers or newspaper subscriptions;

(20) tangible personal property, other than money, traded in as full or part payment of the purchase price;

(21) sprays and insecticides used to control insects, diseases, and weeds for commercial production of fruits, vegetables, feeds, seeds, and animal products;

(22) sales of tangible personal property used or consumed primarily and directly in farming operations, but not sales of:

(a) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools with a unit purchase price not in excess of $100, and maintenance and janitorial equipment and supplies;

(b) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

(c) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

(23) seasonal sales of crops, seedling plants, garden, farm, or other agricultural produce if sold by the producer;

(24) purchases of food made with food stamps;

(25) any container, label, or shipping case, or, in the case of meat or meat products, any casing;

(26) property stored in the state for resale;

(27) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state, except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase;

(28) property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product;

(29) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, except that the state shall be paid any difference between the tax paid and the tax imposed by this part and Part 2, and no adjustment is allowed if the tax paid was greater than the tax imposed by this part and Part 2;

(30) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a person for use in compounding a service taxable under such subsections;

(31) purchases of food made under the WIC program of the United States Department of Agriculture; and

(32) sales or leases of rolls, rollers, refractory brick, electric motors, and other replacement parts used in the furnaces, mills, and ovens of a steel mill described in SIC Code 3312 of the Standard Industrial Classification Manual 1972, of the federal Executive Office of the President, Office of Management and Budget, but only if the steel mill was a nonproducing Utah facility purchased and reopened for the production of steel. The sales or leases shall be exempt if made after July 1, 1987 and before June 30, 1994.

History: L. 1933, ch. 63, § 6; 1933 (2nd S.S.), ch. 20, § 1; 1939, ch. 103, § 1; C. 1943, 80-15-6; L. 1945, ch. 110, § 1; 1957, ch. 126, § 1; 1957, ch. 127, § 1; 1965, ch. 128, § 1; 1967, ch. 162, § 1; 1969, ch. 187, § 3; 1969 (1st S.S.), ch. 14, § 3; 1973, ch. 42, § 9; 1973, ch. 154, § 1; 1975, ch. 179, § 2; 1976, ch. 28, § 1; 1979, ch. 195, § 1; 1981, ch. 238, § 1; 1981, ch. 239, § 2; 1982, ch. 70, § 1; 1983, ch. 264, § 1; 1983, ch. 281, § 1; 1983 (1st S.S.),

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ch. 6, § 2; 1984, ch. 59, § 1; 1984, ch. 60, § 1; 1985, ch. 80, § 3; 1986, ch. 9, § 1; 1986, ch. 55, § 6; 1986, ch. 99, § 1; 1986, ch. 134, § 1; 1986, ch. 168, § 1; C. 1953, 59-15-6; renumbered by L. 1987, ch. 5, § 26; 1987, ch. 51, § 1; 1987 (1st S.S.), ch. 10, §§ 1, 2.

Amendment Notes. — The 1983 amendment by Chapter 264 inserted the provision for exemption of program tapes or records sold to commercial radio broadcasters.

The 1983 amendment by Chapter 281 inserted the exemption for sale of food and beverage to commercial airlines for inflight consumption.

The 1983 (1st S.S.) amendment, in the second paragraph of Subsection (1), substituted "July 15, 1983" for "April 1, 1969"; substituted "October 1, 1983" for "April 1, 1969"; substituted "½%" for "1%"; and substituted "4⅛%" for "4%."

The 1984 amendment by Chapter 59 added Subsection (4).

The 1984 amendment by Chapter 60 inserted "all sales of parts and equipment installed in aircraft used primarily in scheduled interstate or foreign commerce" in the first paragraph of Subsection (1).

The 1985 amendment designated the first paragraph as Subsection (1)(a) and the second paragraph as Subsection (1)(b); substituted "chapter" for "act" near the beginning of Subsection (1)(a); substituted "(i)" for "(1)"; deleted "the following sales transactions" preceding "(i) all sales" in Subsection (1)(a); inserted the "(ii)" through "(xiii)" designations in Subsection (1)(a); deleted "of Utah" and "and" in Subsection (1)(a)(iii); deleted "provisions of the" preceding "motor vehicle laws" in Subsection (1)(a)(x); substituted "Sections 26-13-26 through 26-13-30" for "Sections 26-24-19 through 26-24-26" at the end of Subsection (1)(a)(xii); deleted "of Utah" preceding "is prohibited from taxing" in Subsection (1)(a)(xiii); deleted "the state of" preceding "Utah" at the end of Subsection (1)(a)(xiii); substituted "chapter" for "act" near the beginning of Subsection (1)(b); inserted "State" preceding "Tax Commission" in Subsection (1)(b); deleted "such" preceding "other circumstances" near the end of Subsection (1)(b); substituted "'Medicine' includes (i)" for "it also includes" in Subsection (2)(a); substituted "(ii)" for "also" near the end of Subsection (2)(a); inserted "(i)" preceding "any auditory" in Subsection (2)(b); substituted "or (ii)" for "nor" in Subsection (2)(b); substituted "The gross receipts from sales" for "(a) Sales" at the beginning of Subsection (3); added "are exempted from the taxes imposed by this chapter" to the end of the first sentence of Subsection (3); inserted "(a)" preceding "machinery" in Subsection (3); substituted "(b)" for "nor does it include" in Subsection (3); substituted "or (c) any vehicle" for "nor does this exemption include vehicles" in Subsection (3); substituted "the vehicle is" for "such vehicles are" at the end of Subsection (3); deleted Subsection (3)(b), relating to a phase in of the exemption from the sales tax on tangible personal property; substituted "There are exempted from the taxes imposed by this chapter the gross receipts from all" for "All" at the beginning of Subsection (4); deleted "are not included" preceding "synthetic fuel processing" in Subsection (4); deleted "the provisions of" preceding "this subsection" at the end of Subsection (4); added Subsection (5); and made changes in phraseology, punctuation, and style throughout the section.

The 1986 amendment by Chapter 9, effective July 1, 1986, in Subsection (1)(a) deleted former Subsection (ii), reading "all sales to the United States government," and redesignated former Subsections (1)(a)(iii) through (1)(a)(xiii) as present Subsections (1)(a)(ii) through (1)(a)(xii).

The 1986 amendment by Chapter 55, effective July 1, 1986, deleted the Subsection (a) designation before the introductory language of Subsection (1) and renumbered former Subsections (1)(a)(i) through (1)(a)(iii) as present Subsections (1)(a) through (1)(m); substituted "a Utah state" for "an" in Subsection (1)(a); deleted "and" at the end of Subsection (1)(l); added Subsection (1)(n); and deleted former Subsection (b), regarding a tax refund.

The 1986 amendment by Chapter 99, effective July 1, 1986, added Subsection (8).

The 1986 amendment by Chapter 134, effective July 1, 1986, added Subsection (7).

The 1986 amendment by Chapter 168, effective July 1, 1986, added Subsection (6).

This section was set out as reconciled by the Office of Legislative Research and General Counsel.

The 1987 amendment by Chapter 5, effective February 6, 1987, renumbered this section, which formerly appeared as § 59-15-6; deleted former subsection designation "(1)" at the beginning of the section; rewrote the introductory language, which read "There are exempted from the taxes imposed by this chapter the gross receipts from"; redesignated former Subsection (1)(a) as present Subsection (1) and rewrote that subsection, which read "All sales of motor fuels and special fuels upon which a Utah state excise tax is imposed"; redesignated former Subsection (1)(b) as present Subsection (2), deleted "all" at the beginning and substituted "institutions, and its" for "departments, institutions, and" therein; redesignated former Subsection (1)(c) as present Subsection (3) and, in that subsection, deleted "all" at the beginning and "including candy, gum, and similar confections dispensed" following "products"

and substituted "$1" for "one dollar"; redesignated former Subsections (1)(d) and (1)(e) as present Subsections (4) and (5), deleting "all" at the beginning of each; redesignated former Subsection (1)(f) as present Subsection (6) and, in that subsection, deleted "all" at the beginning, removed the quotations marks around "commercials," "motion picture films" and "prerecorded audio program tapes or records" and substituted "prerecorded videotapes" for "'video tapes'"; redesignated former Subsection (1)(g) as present Subsection (7) and deleted "all" at the beginning of that subsection; redesignated former Subsection (1)(h) as present Subsection (8) and, in that subsection, deleted "all" at the beginning and substituted "their" for "the"; redesignated former Subsection (1)(i) as present Subsection (9) and deleted "all" at the beginning of that subsection; redesignated former Subsection (1)(j) as present Subsection (10) and rewrote the contents thereof, which read "all sales of medicine as defined in this section"; redesignated former Subsection (1)(k) as present Subsection (11) and, in that subsection, substituted "sales or use of" for "all" and "construction of" for "construction"; redesignated former Subsection (1)(l) as present Subsection (12) and, in that subsection, substituted "sales or use of property" for "all sales" and "United States or under the laws of this state" for "United States, or of Utah and"; redesignated former Subsection (1)(m) as present Subsection (13) and substituted "sales of meals" for "lunches or dinners"; deleted former Subsection (2), which defined "medicine"; inserted present Subsection (14); redesignated former Subsection (4) as present Subsection (15) and, in that subsection, deleted the former second sentence, which read "The State Tax Commission shall by rule implement and administer this subsection," and, in the remaining language, deleted "There are exempted from the taxes imposed by this chapter the gross receipts from all" at the beginning and "State Tax" preceding "commission"; redesignated former Subsection (5) as present Subsection (16) and, in that subsection, deleted "State Tax" preceding "commission" in the first and last sentences and, in the first sentence, deleted "There are exempted from the taxes imposed by this chapter the gross receipt from all" at the beginning and inserted "which includes replacement machinery and equipment even though they may increase plant production or capacity"; deleted former Subsection (6), relating to reports to the State Tax Commission; redesignated former Subsection (7) as present Subsection (17) and, in that subsection, deleted "There are exempted from the taxes imposed by this chapter the gross receipts from all" at the beginning and substituted "but only if" for "provided that"; inserted present Subsections (18) to (21); redesignated former Subsection (3) as present Subsection (22); in the introductory language of Subsection (22), combined the former two sentences into the present undivided language, deleted "The gross receipt from" preceding "sales" and "are exempted from the taxes imposed by this chapter" following "operations" and substituted "but not sales of" for "This exemption does not include"; in Subsection (22)(a), deleted "maintenance and janitorial equipment and supplies, and" preceding "hand" and added "and maintenance and janitorial equipment and supplies" at the end; in Subsection (22)(b), substituted "farming" for "actual farming operations" and made a minor punctuation change; in Subsection (22)(c) substituted "registered" for "licensed" and made a minor punctuation change; inserted Subsection (23); redesignated former Subsection (8) as present Subsection (24) and rewrote the contents thereof, which read "Beginning October 1, 1986, there are exempted from the taxes imposed by this chapter all purchases of food made with food stamps"; and added Subsections (25) to (30).

The 1987 amendment, by Chapter 51, effective October 1, 1987, deleted "and" at the end of Subsection (29), added "and" at the end of Subsection (30) and added Subsection (31).

The 1987 (1st S.S.) amendment, by Chapter 10, § 1, effective July 1, 1987, deleted "and" at the end of Subsection (29), added "and" at the end of Subsection (30), and added Subsection (31) (see Chapter 10, § 2).

The Laws 1987 (1st S.S.) amendment, by Chapter 10, § 2, effective October 1, 1987, deleted "and" at the end of Subsection (30), added "and" at the end of Subsection (31) and redesignated the Subsection (31) added by Chapter 10, § 1 as Subsection (32).

Compiler's Notes. — Former § 59-16-4, as amended by Laws 1986, ch. 134, § 2, contained provisions similar to this section.

Effective Dates. — Laws 1984, ch. 59, § 3 provides: "This act shall take effect July 1, 1984."

Laws 1984, ch. 60, § 3 provides: "This act shall take effect July 1, 1984."

Retrospective Operation. — Laws 1987, ch. 5, § 41 provides: "This act has retrospective operation to January 1, 1987."

Cross-References. — Registration of motor vehicles, § 41-1-18 et seq.

C If any farmer or other person who is an agricultural producer establishes a place of business--such as a roadside stand, curb stand, market, stall, or other store--for the sale of seasonal crops which he has produced, and in addition sells agricultural products which he has purchased or otherwise acquired from some third party, he then becomes a retailer of the produce purchased or otherwise acquired and is subject to the provisions of the law with respect to collecting and remitting sales taxes upon such retail sales and filing returns

R865-19-40S. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.

A When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged

R865-19-41S. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Section 59-12-104.

A Sales to the United States Government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax

B In cases where the United States Government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged

C Sales made directly to the United States Government or any authorized instrumentality thereof are not taxable, provided such sales are ordered upon a prescribed governmental purchase order form and are paid for directly to the seller by warrant on government funds Vendors making such sales are required to retain purchase orders, voucher stubs, or like evidence of governmental purchase and payment However, where the sale is $100 or less, a signed certificate claiming governmental exemption by the buyer is acceptable evidence of exemption

R865-19-42S. Sales to The State of Utah and Its Subdivisions Pursuant to Utah Code Ann. Section 59-12-104.

A Sales made to the state of Utah, its departments and institutions or to its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts are exempt from tax if such property for use in the exercise of an essential governmental function If the sale is paid for by a warrant drawn upon the state treasurer or the official disbursing agent of any political subdivision, the sale is considered as being made to the state of Utah or its political subdivisions and exempt from tax

R865-19-43S. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.

A All sales made to or by religious and charitable institutions in the conduct of their regular religious and charitable functions are not subject to sales tax

B The functions and activities of churches and regularly organized charities will, as a general rule, be deemed to be the regular religious and charitable functions of the organization

C The exemption granted by the statute under this rule does not apply to institutions merely operating on a nonprofit basis Every institution claiming exemption under this rule must obtain from the Tax Commission an approval of its claim for such exemption Vendors making sales to institutions claiming exemptions must obtain a certificate from the institutions in the form set forth in Rule R865-19-23S

R865-19-44S. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59- 12-104.

A Sales made in interstate commerce are not subject to the sales tax imposed However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax

B Before a sale qualifies as a sale made in interstate commerce, the following must be complied with

1 the transaction must involve actual and physical movement of the property sold across the state line,

2 such movement must be an essential and not an incidental part of the sale,

3 the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer,

C Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges

D If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer

R865-19-45S. Auctioneers, Consignees, Bailees, Etc. Pursuant to Utah Code Ann. Section 59-12-102.

A Every auctioneer, consignee, bailee, factor, etc , entrusted with possession of any bill of lading, custom house permits, warehousemen's receipts, or other documents of title for delivery of any tangible personal property, or entrusted with possession of any of such personal property for the purpose of sale, is deemed to be the retailer thereof, and is required to collect sales tax, file a return, and remit the tax The same rule applies to lien holders such as storage men, pawnbrokers, mechanics, and artisans

R865-19-48S. Charge For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-102.

A Sales of containers, labels, bags, shipping cases, and the like are taxable when

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11 Federally chartered credit unions

C The following are taxable
1 national banks
2 federal building and loan associations
3 joint stock land banks
4 state banks (whether or not members of the Federal Reserve System)
5 state building and loan associations
6 private irrigation companies
7 rural electrification projects
8 sales to officers or employees of exempt instrumentalities

D No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property

E Sales made by governmental units are subject to sales tax

R865-19-55S. Hospitals Pursuant to Utah Code Ann. Section 59-12-104.

A All retail sales (other than prescribed medicines as noted in Rule R865-19-37S) made to hospitals are taxable unless the Tax Commission has furnished the hospital an opinion that it qualifies as a religious or charitable institution, and such hospital furnishes its vendors a purchase order or a check in accordance with instructions set forth in Rule R865-19-23S

R865-19-56S. Sales by Employers to Employees Pursuant to Utah Code Ann. Section 59-12-102.

A Sales to employees are subject to tax on the amount charged for goods and taxable services If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away

R865-19-57S. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable

B Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed

R865-19-58S. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.

A Sale of tangible personal property to real property contractors and repairmen of real property is generally subject to tax

1 The person who converts the personal property into real property is the consumer of the personal property since he is the last one to own it as personal property

2 The contractor or repairman is the consumer of tangible personal property used to improve, alter or repair real property, regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost- plus contract

3 The sale of real property is not subject to the tax nor is the labor performed on real property For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors and subcontractors are taxable transactions as sales to final consumers This is true whether the contract is performed for an individual, a religious institution, or a governmental instrumentality

4 Sales of materials to religious or charitable institutions and government agencies are exempt only if sold as tangible personal property and the seller does not install the material as an improvement to realty or use it to repair real property

B If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property

1 If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers

2 The contractor must accrue and report tax on all merchandise bought tax-free and used in performing contracts to improve or repair real property Books and records must be kept to account for both material sold and material consumed

C Sales of materials and supplies to contractors for use in out-of-state jobs are taxable unless sold in interstate commerce in accordance with Rule R865- 19-44S

D This rule does not apply to contracts whereby the retailer sells and installs personal property which does not become part of the real property See Rules R865-19-51S, R865-19-59S, and R865-19-78S for information dealing with installation and repair of tangible personal property

R865-19-59S. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.

A Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work

1 Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job These items shall be taxed at the time of sale if it is known that they are to be consumed However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19-23S and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place

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History: Const. 1896.

Compiler's Notes. — The quotation marks at the end of this section have been carried in brackets in all compilations since Revised Statutes of 1898.

Cross-References. — Oaths of officers, § 52-1-1.

NOTES TO DECISIONS

ANALYSIS

Bond required in addition to oath.
Formal ritual unnecessary.
Supreme Court justices required to take oath.

Bond required in addition to oath.

Statute requiring state treasurer to give bond is not unconstitutional on ground that Legislature could not add to requirement in this section. State ex rel. Stain v. Christensen, 84 Utah 185, 35 P.2d 775 (1934).

Formal ritual unnecessary.

A deputy county recorder took the oath of office, required by this section, by his signing of oath form duly notarized by a deputy county clerk (a person duly authorized to administer oaths) although he did not go through some formal ritual, with the raising of his right hand. State v. Mathews, 13 Utah 2d 391, 375 P.2d 392 (1962).

Supreme Court justices required to take oath.

Judges of the Supreme Court subscribe to this oath when entering upon their duties. Critchlow v. Monson, 102 Utah 378, 131 P.2d 794. For sequel to this case, see State ex rel. Jugler v. Grover, 102 Utah 459, 132 P.2d 125 (1942).

COLLATERAL REFERENCES

C.J.S. — 67 C.J.S. Officers and Public Employees § 46.

Key Numbers. — Officers ⇐ 36(1).

ARTICLE V

DISTRIBUTION OF POWERS

Section
1. [Three departments of government.]

Section 1. [Three departments of government.]

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

History: Const. 1896.

Cross-References. — Executive department, Utah Const., Art. VII.

Judicial department, Utah Const., Art. VIII.

Legislative department, Utah Const., Art. VI.

Municipal powers not delegable, Utah Const., Art. VI, § 28.

Compiler's Notes. — The 1971 proposed amendment to this article by Senate Joint Resolution No. 11 was repealed and withdrawn by Senate Joint Resolution No. 1, Laws 1972.

The 1972 amendment of Article VI was proposed by Senate Joint Resolution No. 1, Laws 1972, and approved at the general election on November 7, 1972. Not all sections in this article were affected by the amendment.

Section 1. [Power vested in Senate, House and People.]

The Legislative power of the State shall be vested:

1. In a Senate and House of Representatives which shall be designated the Legislature of the State of Utah.

2. In the people of the State of Utah, as hereinafter stated:

The legal voters or such fractional part thereof, of the State of Utah as may be provided by law, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people for approval or rejection, or may require any law passed by the Legislature (except those laws passed by a two-thirds vote of the members elected to each house of the Legislature) to be submitted to the voters of the State before such law shall take effect.

The legal voters or such fractional part thereof as may be provided by law, of any legal subdivision of the State, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people of said legal subdivision for approval or rejection, or may require any law or ordinance passed by the law making body of said legal subdivision to be submitted to the voters thereof before such law or ordinance shall take effect.

History: Const. 1896; Nov. 6, 1900.

Cross-References. — Direct legislation elections, § 20-11-1 et seq.

Distribution and separation of powers, Utah Const., Art. V.

Enabling Act provisions, Enabling Act, § 19.

Statutory provisions relating to legislature, Title 36; to statutes, Title 68.

NOTES TO DECISIONS

ANALYSIS

Administrative bodies.

When a policy has been prescribed by statute, the power to make rules and regulations to carry the policy into effect may be conferred upon or delegated to an administrative agent such as a board or commission. State v. Goss, 79 Utah 559, 11 P.2d 340 (1932).

An administrative body within prescribed limits, and when authorized by the law-making power, may make rules and regulations calculated to carry into effect the expressed legislative intention. Western Leather & Finding Co. v. State Tax Comm'n, 87 Utah 227, 48 P.2d 526 (1935).

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Sec. 4. [Repealed.]

Repeals. — Laws 1988, Senate Joint Resolution No. 4, § 5 proposed repeal of this section, relating to the formation of senatorial districts.

The proposed repeal was approved at the general election on November 8, 1988, and became effective on January 1, 1989.

ARTICLE X

EDUCATION

Section 1. [Free nonsectarian schools.]

The Legislature shall provide for the establishment and maintenance of the state's education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system. Both systems shall be free from sectarian control.

History: Const. 1896; L. 1986 (2nd S.S.), S.J.R. 1.

Compiler's Notes. — Section 3 of Laws 1986 (2nd S.S.), Senate Joint Resolution No. 1, which proposed the 1986 amendment of this article, provides: "Statutes and regulations which are in existence on the effective date of this amendment and which are not inconsistent with this amendment shall continue in force and effect until repealed or changed by statute."

Cross-References. — Higher education, Title 53B.

Public education, Title 53A.

Free, nonsectarian schools, Utah Const., Art. III.

NOTES TO DECISIONS

ANALYSIS

Boards of education.

Powers of board of education are statutory and legislature may authorize governing authorities of school districts to do anything not prohibited by Constitution, but board has only such powers as are expressly conferred upon it and such implied powers as are necessary to execute and carry into effect its express powers. Beard v. Board of Educ., 81 Utah 51, 16 P.2d 900 (1932).

If action of board of education is within powers conferred upon it by legislature, and pertains to matter in which board is vested with authority to act, courts will not review action to substitute its judgment for that of board as to matters within its discretion, but action may be maintained by taxpayer to enjoin and restrain school authorities from acting beyond scope of their powers or in violation of law where remedy by law is inadequate. Beard v. Board of Educ., 81 Utah 51, 16 P.2d 900 (1932).

Under authority of this section, the legislature created the state board of education and the district school board. Hansen v. Board of

NOTES TO DECISIONS

ANALYSIS

Rights, immunities, franchises and endowments.

In determining what the terms "rights" and "franchises" meant to the people of the territory, the court will assume that all rights and franchises which had been granted prior to statehood were perpetuated. Spence v. Utah State Agrl. College, 119 Utah 104, 225 P.2d 18 (1950).

To determine what rights, immunities, franchises and endowments are perpetuated by this section resort must be made to territorial laws fixing the rights and status of the University of Utah at the time the Constitution was adopted. University of Utah v. Board of Exmrs., 4 Utah 2d 408, 295 P.2d 348 (1956).

The powers of a state university to dispose of its funds are limited to those expressly conferred by the Legislature; failure to confer authority implies its denial, and general grants of power will not be read to permit specific types of transactions not expressly authorized elsewhere; thus where no specific authorization for state university to invest in common stocks existed, the action was ultra vires. First Equity Corp. v. Utah State Univ., 544 P.2d 887 (Utah 1975).

Status of university.

The University of Utah is not an autonomous constitutional corporation free from the control of the legislature, administrative bodies, commissions and agencies and officers of the state. University of Utah v. Board of Exmrs., 4 Utah 2d 408, 295 P.2d 348 (1956).

The Utah Constitution is not one of grant, but one of limitation. Consequently, in order that the legislative body be restricted in educational as well as all other matters, it is imperative that the legislature be restricted expressly or by necessary implication by the Constitution itself. Nowhere is there any express or implied restraint against the legislature respecting the University of Utah. University of Utah v. Board of Exmrs., Utah 2d 408, 295 P.2d 348 (1956).

COLLATERAL REFERENCES

Utah Law Review. — Higher Education Act of 1969, 1970 Utah L. Rev. 76.

Am. Jur. 2d. — 15A Am. Jur. 2d Colleges and Universities § 4.

C.J.S. — 14 C.J.S. Colleges and Universities §§ 4 to 6.

Key Numbers. — Colleges and Universities ⇐ 3, 5.

Sec. 5. [State School Fund and Uniform School Fund — Establishment and use.]

(1) There is established a permanent State School Fund which shall consist of revenue from the following sources: (a) proceeds from the sales of all lands granted by the United States to this state for the support of the public elementary and secondary schools; (b) 5% of the net proceeds from the sales of United States public lands lying within this state; (c) all revenues derived from nonrenewable resources on school or state lands, other than those lands granted for other specific purposes; and (d) other revenues as appropriated by the Legislature. The State School Fund principal shall be safely invested and held by the state in perpetuity. The interest of the State School Fund only shall be expended for the support of the public elementary and secondary schools. The Legislature by statute may provide for necessary administrative costs. The State School Fund shall be guaranteed by the state against loss or diversion.

(2) There is established a Uniform School Fund which shall consist of revenue from the following sources: (a) interest from the State School Fund; (b) except as appropriated by the Legislature for the State School Fund, revenues derived from renewable resources on school or state lands, other than those granted for specific purposes; and (c) other revenues which the Legislature

may appropriate. If the interest generated by the State School Fund exceeds the amount required to fund the Uniform School Fund, as appropriated annually by the Legislature, the excess shall pass through to the General Fund. The Uniform School Fund shall be maintained and used for the support of the state's public elementary and secondary schools and apportioned as the Legislature shall provide.

History: Const. 1896; L. 1909, H.J.R. 14; 1929, H.J.R. 3; 1937, H.J.R. 5; 1984 (2nd S.S.), H.J.R. 4; 1986 (2nd S.S.), S.J.R. 1.

Compiler's Notes. — The 1986 amendment renumbered the provisions of former Section 3 of this article and amended the provisions to read as set out above. The provisions of former Section 5 now appear as Section 7 of this article.

Cross-References. — Land grants to schools, Enabling Act, § 6 et seq.

Uniform School Fund, § 53A-16-101.

NOTES TO DECISIONS

ANALYSIS

Adverse possession of school lands.
Exemption from taxation.
Mineral proceeds.

Adverse possession of school lands.

Land granted to state by the Enabling Act for support of common schools could not be acquired by defendants by adverse possession although state had sold land in controversy to plaintiff. Van Wagoner v. Whitmore, 58 Utah 418, 199 P. 670 (1921).

This provision was not impinged by the quieting of title in one claiming, by adverse possession, land which was granted to the state by the federal government for the use of an agricultural college, where the state had received the purchase price long before the claimant's entry and state denied interest in the land, even though purchaser and his successors had not demanded or received the patent. Minersville Land & Livestock Co. v. Staten, 7 Utah 2d 331, 325 P.2d 260 (1958).

Exemption from taxation.

Proceeds from sale of lands granted by federal government to the state of Utah for the support of the common schools are exempt from taxation. Duchesne County v. State Tax Comm'n, 104 Utah 365, 140 P.2d 335 (1943).

Mineral proceeds.

Mineral proceeds derived from state school lands may be deposited in the Uniform School Fund and are not required to be deposited in the State School Fund. Jensen v. Dinehart, 645 P.2d 32 (Utah 1982).

COLLATERAL REFERENCES

Am. Jur. 2d. — 68 Am. Jur. 2d Schools § 86.

C.J.S. — 78 C.J.S. Schools and School Districts §§ 16, 18.

Key Numbers. — Schools and School Districts ⇐ 15, 17.

Sec. 6. [Repealed.]

Repeals. — Repeal of this section, relating to separate control of city schools, was proposed by Senate Joint Resolution No. 2, Laws 1971 and adopted at the general election on November 7, 1972, effective January 1, 1973.

Nonextraterritorial validity of tax.

Under this section, no taxing unit can legally levy any tax which has any extraterritorial validity, and the same rule is applied to assessments as distinguished from general taxes, such as assessments levied by irrigation district. Parry v. Bonneville Irrigation Dist., 71 Utah 202, 263 P. 751 (1928), citing prior cases.

"Owned" construed.

Term "owned," as used in this section, has reference to place where property is, and not to where owner may reside, and sheep were not assessable in certain city where none of them had been within territorial limits of city at any time during period for which taxes were assessed. Murdock v. Murdock, 38 Utah 373, 113 P. 330 (1911).

Property disconnected from city.

Under this section, a city cannot claim taxes on property situated in area disconnected from the city, during interim between the entry of district court's decree and the reversal of such decree by the Supreme Court. Plutus Mining Co. v. Orme, 76 Utah 286, 289 P. 132 (1930).

Special assessments for local improvements as not within section.

This section does not govern special assessments levied by drainage districts, for there is a well-recognized distinction between a tax imposed for state, county and municipal purposes and a special assessment levied for local improvements. State ex rel. Ferry v. Corinne Drainage Dist., 48 Utah 1, 156 P. 921 (1916); State ex rel. Moody v. Millard County Drainage Dist. No. 1, 48 Utah 11, 156 P. 924 (1916).

"Tax" construed.

Section 10-8-17, authorizing city council acting as distributing agent of water outside or within corporate limits to levy tax for control and distribution of such water, did not violate this provision, since word "tax" as formerly used in statute was not tax within meaning and intent of this provision. Pleasant Grove City v. Holman, 59 Utah 242, 202 P. 1096 (1921).

"Used" construed.

Under this section, equipment of foreign corporation, such as a railroad contractor brought into this state temporarily for "use" on a job undertaken by such company in this state, is subject to taxation where located or used. Hamilton & Gleason Co. v. Emery County, 75 Utah 406, 285 P. 1006 (1930).

Utah Neighborhood Development Act.

Section 17A-2-1201 et seq. does not violate this section by depriving the county of the full value of each of its tax resources within its jurisdiction: this section permits taxation by a state agency of property within its territorial limits although such property is also within the territorial limits of a county. Salt Lake County v. Murray City Redevelopment, 598 P.2d 1339 (Utah 1979).

COLLATERAL REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d State and Local Taxation § 648 et seq.

C.J.S. — 84 C.J.S. Taxation §§ 92 to 120, 130, 142.

Key Numbers. — Taxation ⇐ 88, 97 to 102, 112(1), 78 to 91.

Sec. 11. [Creation of State Tax Commission — Membership — Governor to appoint — Terms — Duties — County boards — Duties.]

There shall be a State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party. The members of the Commission shall be appointed by the Governor, by and with the consent of the Senate, for such terms of office as may be provided by law. The State Tax Commission shall administer and supervise the tax laws of the State. It shall assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties. It shall have such other powers of original assessment as the Legislature may provide. Under such regulations in such cases and within such limitations as the Legislature may prescribe, it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of property within the counties. The duties imposed upon the State Board of

Equalization by the Constitution and Laws of this State shall be performed by the State Tax Commission.

In each county of this State there shall be a County Board of Equalization consisting of the Board of County Commissioners of said county. The County Boards of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within their respective counties, subject to such regulation and control by the State Tax Commission as may be prescribed by law. The State Tax Commission and the County Boards of Equalization shall each have such other powers as may be prescribed by the Legislature.

History: Const. 1896; L. 1911, S.J.R. 12; 1930 (S.S.), S.J.R. 3; 1957, H.J.R. 2.

Cross-References. — Apportionment of total assessment, § 59-2-801 et seq.

Assessment of property, § 59-2-201 et seq.

County commissioners as board of equalization, § 17-5-52.

Equalization of assessments, § 59-2-1001 et seq.

NOTES TO DECISIONS

Analysis

Assessment of mines.

—Power of district courts.

The legislature is without power to confer the power of assessing mines, which includes fixing the valuation of mining property, on the tax division of the district court; however, if the tax division finds a tax commission order in error, it may reverse and remand the matter to the commission for a proper determination pursuant to correct legal standards. Kennecott Corp. v. Salt Lake County, 702 P.2d 451 (Utah 1985).

Powers of commission.

Statute which conferred power on state board of equalization (now state tax commission) to assess property, the situs and operation of which were wholly within one county, was violative of this section. State ex rel. Salt Lake City v. Eldredge, 27 Utah 477, 76 P. 337 (1904).

The state tax commission may sue in its own name for collection of the sales tax. State Tax Comm'n v. City of Logan, 88 Utah 406, 54 P.2d 1197 (1936).

Constitution has conferred on the state tax commission the power of assessment of utilities, which includes fixing of valuations on utility property, and this duty and power cannot be directly exercised by the legislature or by it be conferred on any other officer or board, such as the public service commission. State ex rel. Public Serv. Comm'n v. Southern Pac. Co., 95 Utah 84, 79 P.2d 25 (1938).

Tank cars.

The assessment of tank cars of refining company, situated by their use in more than one county, or operated in more than one county, may fairly be regarded as an act or method of "equalizing and adjusting" the valuation of property between the different counties. Sinclair Ref. Co. v. State Tax Comm'n, 102 Utah 340, 130 P.2d 663 (1942).

Unemployment compensation fund.

Unemployment compensation contributions are not taxes; § 35-4-17, in so far as it empowers industrial commission to collect contributions to unemployment compensation fund, is not violative of this section. Snyder Mines, Inc. v. Industrial Comm'n, 117 Utah 471, 217 P.2d 560 (1950).

COLLATERAL REFERENCES

Utah Law Review. — Property Tax Assessment and the Utah Constitution — A Taxpayer's Dilemma, 1966 Utah L. Rev. 491.

Am. Jur. 2d. — 71 Am. Jur. 2d State and Local Taxation §§ 720 to 724.

C.J.S. — 84 C.J.S. Taxation §§ 8, 373 et seq., 489 et seq.

Key Numbers. — Taxation ⇐ 28, 37.6, 309 et seq., 446½ et seq.

Sec. 12. [Stamp, income, occupation, license or franchise tax permissible — Reference to United States laws in imposition of income taxes — Income or intangible property taxes allocated to public school system.]

(1) Nothing in this Constitution shall be construed to prevent the Legislature from providing a stamp tax, or a tax based on income, occupation, licenses, franchises, or other tax provided by law. The Legislature may provide for deductions, exemptions, or offsets on any tax based upon income, occupation, licenses, franchises, or other tax as provided by law pursuant to this section.

(2) Notwithstanding any provision of this Constitution, the Legislature, in any law imposing income taxes, may define the amount on, in respect to, or by which the taxes are imposed or measured, by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time and may prescribe exemptions or modifications to any such provision.

(3) All revenue received from taxes on income or from taxes on intangible property shall be allocated to the support of the public school system as defined in Article X, Sec. 2 of this Constitution.

History: Const. 1896; Nov. 6, 1906; L. 1982, S.J.R. 3.

Cross-References. — Franchise and privilege taxes, § 59-13-1 et seq.
Income tax, Chapter 10 of Title 59.

NOTES TO DECISIONS

ANALYSIS

In general.

This section does not limit power of legislature to impose the several kinds of taxes specified in section. Salt Lake City v. Christensen Co., 34 Utah 38, 95 P. 523, 17 L.R.A. (n.s.) 898 (1908).

Franchise taxes.

Corporate franchises partake of dual character: one, which relates merely to right or privilege to be or exist as corporation, is not asset of corporation and is not subject to franchise tax; other is property subject to alienation and transfer, and taxable as other property. Blackrock Copper Mining & Milling Co. v. Tingey, 34 Utah 369, 98 P. 180, 28 L.R.A. (n.s.) 255, 131 Am. St. R. 850 (1908).

License or occupation taxes.

Mere tax imposed on business is not "license," unless levy confers, as to business, right or privilege which would not exist otherwise. Cache County v. Jensen, 21 Utah 207, 61 P. 303 (1900).

Ordinance imposing graduated license tax was valid. Salt Lake City v. Christensen Co., 34 Utah 38, 95 P. 523, 17 L.R.A. (n.s.) 898 (1908).

Under the authority of this section, a city may impose a license tax upon a public utility holding a franchise from the city, in absence of anything in franchise or city ordinance precluding city from so doing. Salt Lake City v. Utah Light & Ry. Co., 45 Utah 50, 142 P. 1067 (1914).

Under this section, there is a distinction between an occupation tax and a license tax, the former being designed to raise revenue, and the latter to regulate or to prohibit a particular business. Provo City v. Provo Meat & Packing Co., 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

Sales taxes.

Sales tax would seem to be authorized by this section. State Tax Comm'n v. City of Logan, 88 Utah 406, 54 P.2d 1197 (1936).

UTAH CODE ANNOTATED

REPLACEMENT
VOLUME 6B
1985 Pocket Supplement

Containing

Amendments to statutes and new statutes in Title 59 enacted since publication of Replacement Volume 6B through the 1985 First Special Session of the Utah Legislature

Edited by
The Publisher's Editorial Staff

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PUBLISHER'S NOTE

This pocket supplement contains new statutes and amendments to statutes enacted by the Legislature of the State of Utah since publication of the parent volume. The sections have been brought to date through the 1985 First Special Session. Language inserted into existing statutes by amendment in 1985 is indicated by underscores; material deleted in 1985 is indicated by ~~overstrikes.~~

The effective date of enactment or amendment of a law passed in 1970 and following years can be determined by checking the year and chapter number of the Session Law in the source note following the section and then referring to the appropriate Table of Session Laws in the 1985 pocket supplement to the Parallel Tables Volume.

Case annotations herein close with 694 Pacific Reporter (2nd series); 105 Supreme Court Reporter (Adv. Sheet No. 9, p. 983); 752 Federal Reporter (2nd series); and 601 Federal Supplement.

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TITLE 59

REVENUE AND TAXATION

CHAPTER 2

EXEMPTIONS

(b) The business entity is entitled to a tax credit equal to 10% of the costs of any commercial energy system installed, including installation costs, against any income tax or franchise tax liability of the business entity under Title 59 for the taxable year in which the commercial energy system is completed and placed in service. The total amount of the credits may not exceed $25,000 per commercial unit. This credit is allowed for any commercial energy system completed and placed in service after January 1, 1986, but prior to December 31, 1990. For any commercial energy system completed and placed in service prior to the 1986 taxable year, the claim regarding it shall be filed no later than when returns are due for the 1985 taxable year. The credit for any commercial energy system completed and placed in service prior to July 1, 1985, is equal to 10% of the costs of the commercial energy system installed on each of the business entity's commercial units only, including installation costs. The total amount of the credit for any commercial energy system completed and placed in service prior to July 1, 1985, may not exceed $3,000 per commercial unit.

(4) (a) Business entities who lease a commercial energy system installed on a commercial unit are eligible for the commercial energy tax credits described in this chapter, if the lessee can confirm that the lessor irrevocably elects not to claim the state tax credits.

(b) Only the principal recovery portion of the lease payments, which is the cost incurred by the taxpayer in acquiring the commercial energy system excluding interest charges and maintenance expenses, is eligible for the tax credits.

(c) Business entities who lease commercial energy systems are eligible to use the tax credits for a period no greater than seven years from the initiation of the lease.

[~~(3)~~] (5) The tax credits provided for in this section can be claimed by either the business entity, or if assigned as provided in Subsection (2)(b), the individual taxpayer, [~~and~~] in the return for the taxable year in which the energy system is [~~so~~] completed and placed in service, except as [~~otherwise~~] provided in Subsection (2)[~~; or if assigned to an individual taxpayer, as otherwise provided in Subsection 59-14B-2(2); and additional~~]. Additional energy systems or parts of energy systems may be claimed in returns for subsequent years as long as the total amount claimed does not exceed the maximum credit allowed for in Subsection (2). If the amount of the tax credit exceeds the income tax liability of the business entity for that taxable year, or individual taxpayer if assigned as provided in Subsection (2)(b), then the amount not used as a credit may be carried over for a period which does not [~~to~~] exceed the next four taxable years.

History: C. 1953, 59-14B-3, enacted by L. 1980, ch. 66, § 3; L. 1981, ch. 244, § 2; 1985, ch. 186, § 3.

Compiler's Notes.

The 1981 amendment deleted "only once" after "can be claimed" in the first sentence of subsec. (3); deleted "that" before "in the return" in the first sentence of subsec. (3); and added "and additional energy systems * * allowed for in subsection (2)" to the first sentence in subsec. (3).

Effective Date.

Section 3 of Laws 1981, ch. 244 provided: "This act shall take effect on January 1, 1981, and shall apply to calendar year taxpayers beginning January 1, 1981, and to fiscal year taxpayers for taxable years commencing during 1981, and all taxable years thereafter through 1985."

59-14B-4. Tax credit as additional to other credits — Certification by energy office — Rules and regulations — Source of funds. (1) The tax credit provided in this chapter is in addition to any provided under the laws or rules and regulations of the United States.

(2) The energy office may promulgate standards for residential and commercial energy systems that cover the safety, reliability, efficiency, leasing, and technical

feasibility of the systems to ensure that the systems eligible for the credit provided in this chapter use the state's renewable and nonrenewable energy resources in an appropriate and economic manner. No tax credit can be taken under this chapter until the energy office has certified that the energy system has been completely installed and is a viable system for saving or production of energy from renewable resources.

(3) The energy office and the tax commission [~~is~~] are authorized to promulgate [~~such~~] rules [~~and regulations~~] in accordance with Chapter 46, Title 61, the Utah Administrative Rule-making Act, [~~(chapter 46, title 61) as~~] which are necessary for purposes of this chapter.

(4) The amount of the credits allowed by this chapter is [~~to be~~] derived from the [~~state~~] General Fund [~~and~~] with appropriate transfers made from it to reimburse the Uniform School Fund to effectuate this chapter.

History: C. 1953, 59-14B-4, enacted by L. 1980, ch. 66, § 4; L. 1985, ch. 186, § 4.

CHAPTER 15

SALES TAX

59-15-2. Definitions. As used in this chapter:

(1) "Person" includes any individual, firm, copartnership, joint adventure, corporation, estate or trust, or any group or combination acting as a unit and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(2) "Sale" or "sales" includes installment and credit sales, every closed transaction constituting a sale, and also includes the sale of electrical energy, gas, services or entertainment taxable under the terms of this act. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price shall be deemed a sale. An even exchange of tangible personal properties shall not be deemed a sale for purposes of this act, but in any transaction wherein tangible personal property is taken as part of the sales price of other tangible personal property, the balance valued in money or other consideration shall be deemed a sale.

(3) "Wholesaler" means a person doing a regularly organized wholesale or jobbing business and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale.

(4) "Wholesale" means a sale of tangible personal property by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale, and does not include a sale by wholesalers or retailers to users or consumers not for resale, except as otherwise specified.

(5) "Retailer" means a person doing a regularly organized retail business in tangible personal property, and selling to the user or consumer and not for resale, and includes commission merchants, auctioneers, and all persons regularly engaged in the business of selling to users or consumers within the state of Utah; but the term "retailer" does not include farmers, gardners, stockmen, poultrymen or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit. The term "retail sale" means every sale within the state of Utah by a retailer or wholesaler to a user or consumer, except sales defined as wholesale sales or otherwise exempted by the terms of this act; but the term "retail sale" is not intended to include isolated nor occasional sales by persons not regularly engaged in business, nor seasonal sales of crops, seedling plants, garden or farm or other agricultural produce by the producer thereof, or the return to the producer thereof of processed agricultural products, but no sale of a vehicle of a type required to be registered under the provisions of the motor vehicle laws of this state shall be deemed isolated or occasional for the purposes of this act, except that any transfer of any motor vehicle in a business reorganization where the ownership of the transferee organization is substantially the same as to the ownership of the transferor organization shall be considered an isolated or occasional sale. Any farmer or other agricultural producer who sells poultry, eggs or dairy products to consumers will be deemed to be a retailer making retail sales and such sales will not be exempt under the provisions of this act if such sales have an average monthly sales value of $125 or more.

(6) Each purchase of tangible personal property or product made by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which enters into and becomes an ingredient or component part of the tangible personal property or product which he manufactures, or compounds, and the container, label or the shipping case thereof, shall be deemed a wholesale sale and shall be exempt from taxation under this act; and for the purpose of this act, poultry, dairy and other livestock feed, and the components thereof, including all baling ties and twine used in the baling of hay and straw and all fuel used for heating orchards, commercial greenhouses, doing a majority of their business in wholesale sales, and providing power for off highway type farm machinery, and all seeds and seedlings, are deemed to become component parts of the eggs, milk, meat and other livestock products, plants and plant products, produced for resale; and each purchase of such feed or seed from a wholesaler, or retailer, as well as from any other person shall be deemed a wholesale sale and shall be exempt from taxation under this act; provided also that sprays and insecticides used in the control of insect pests, diseases and weeds for the commercial production of fruit, vegetables, feeds, seeds, and animal products shall be deemed a wholesale sale and exempt from taxation under this act.

Each purchase of service as defined in section 59-15-4(b) by a person engaged in compounding and selling a service which is subject to a tax under section 59-15-4(b) and actually used in compounding such taxable service shall be deemed a wholesale sale and shall be exempt from taxation under this act.

(7) When right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if an outright sale were made, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor or lessor upon the rentals paid, regardless of the duration of the lease or contract.

(8) "Tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he is required to report his collections, as the context may require.

(9) "Admission" includes seats and tables reserved or otherwise, and other similar accommodations and charges made therefor and "amount paid for admission" means the amount paid for such admission, exclusive of any admission tax imposed by the federal government or by this act.

(10) "Purchase" means the price to the consumer exclusive of any tax imposed by the federal government or by this act.

(11) "Motion picture exhibitor" means any person engaged in the business of operating a theatre or establishment in which motion pictures are exhibited regularly to the public for a charge.

History: L. 1933, ch. 63, § 2; 1933 (2nd S.S.), ch. 20, § 1; 1935, ch. 91, § 1; 1937, ch. 110, § 1; 1939, ch. 103, § 1; C. 1943, 80-15-2; L. 1943, ch. 92, § 1; 1949, ch. 83, § 1; 1957, ch. 125, § 1; 1963, ch. 140, § 1; 1969, ch. 187, § 1; 1969 (1st S.S.), ch. 14, § 1; 1971, ch. 152, § 1; 1973, ch. 151, § 1; 1981, ch. 239, § 1.

Compiler's Notes.

The 1981 amendment inserted "As used in this chapter" at the beginning of the section; substituted letters for numbers as subdivision designations; deleted "For the purpose of this act" at the beginning of subd. (9); added subd. (11); and made minor changes in phraseology.

Isolated and occasional sale.

Sale of used refinery "reformer" by one oil company to another, where the seller was not in the business of selling "reformers" and generally retained those it owned until obsolescence unless, due to operational changes, units became surplus, was an exempt "isolated and occasional sale" within the meaning of this section Husky Oil Co. v. State Tax Comm. (1976) 556 P 2d 1268.

"Users" or "consumers."

Where "demonstrator" autos were retained by dealership on a special demonstrator account, removal of vehicles from general inventory kept for sale, putting them into use as test and courtesy vehicles for prospective customers and as transportation for the wife of the dealership's owner, was not tantamount to a taxable "sale" of the vehicles, since they were all still held for ultimate sale to customers, and their use prior to such sale was primarily for demonstration and display in the regular course of business. Merrill Bean Chevrolet, Inc. v. State Tax Comm (1976) 549 P 2d 443.

Dentists were obligated to pay the tax imposed by this chapter on materials they purchased for use in dental work; they were "users" of the products on the sale of which the tax was sought to be imposed, and as between the dentists and their patients, the tax commission could properly choose to assess the dentists. Hardy v. State Tax Comm. (1977) 561 P 2d 1064, following Utah Concrete Products Corp. v. State Tax Comm. (1942) 101 U 513, 125 P 2d 408.

59-15-3. License to do business, etc.

Cross-References.

Nonholder of license, penalty for failure to report purchase, 59-16-9.

Seller's permit under county or municipal sales and use tax provisions, 11-9-4.

59-15-4. Sales tax — Rate — Disposition of revenue from temporary increase. From and after the effective date of this act there is levied and there shall be collected and paid:

(a) A tax upon every retail sale of tangible personal property made within the state of Utah equivalent to the following rates: (i) 4-5/8% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and~~] (ii) [~~4-1/2%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and (iv) 4-1/2% from January 1, 1990, and thereafter of the purchase price paid or charged, except that where a person takes, as a trade-in for part payment of the merchandise sold, tangible personal property other than money, that tax shall be computed and paid only upon the net difference between the selling price of the merchandise sold and the amount of the trade-in allowance. For the purpose of this subsection, currency and coinage constituting legal tender of the United States or of a foreign nation, all sales of gold, silver, or platinum ingots, bars, medallions, or decorative coins, not constituting legal tender of any

nation, with a gold, silver, or platinum content of not less than 80% shall not be considered tangible personal property. The sale of coal, fuel oil, and other fuels shall not be subject to the tax except as hereinafter provided.

(b) A tax equivalent to the following percentages of the amount paid:

(1) [~~Four and five-eighths percent~~] 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and 4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and 4-½% from January 1, 1990, and thereafter of the amount paid to common carriers or telephone or telegraph corporations as defined by Section 54-2-1, whether the corporations are municipally or privately owned, for all transportation, telephone service, or telegraph service; but the tax shall not apply to intrastate movements of freight and express or to street railway fares or to the sale of newspapers and newspaper subscriptions.

(2) [~~Four and five-eighths percent~~] 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and 4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and 4-½% from January 1, 1990, and thereafter of the amount paid to any person as defined in this act including municipal corporations, for gas, electricity, heat, coal, fuel oil, or other fuels sold or furnished for commercial consumption. For purposes of this Subsection (b), commercial consumption shall not include the amounts of these fuels sold or furnished to apartment houses or other similar buildings where persons maintain their places of residence but only to the extent these fuels are used for these places of residence.

(3) [~~One and five-eighths percent~~] 1-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and 1-½%~~] 1-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and 1-½% from January 1, 1990, and thereafter of the amount paid to any person as defined in this act, including municipal corporations, for gas, electricity, heat, coal, fuel oil, or other fuels sold or furnished for domestic or residential use, including use by persons residing in apartment houses or similar buildings.

(c) A tax equivalent to the following rates: 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and 4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and 4-½% from January 1, 1990, and thereafter of the amount paid for all meals furnished by any restaurant, eating house, hotel, drugstore, club, or other place.

(d) A tax equivalent to the following rates: 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and 4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and 4-½% from January 1, 1990, and thereafter of the amount paid for admission to any place of amusement, entertainment, or recreation.

(e) A tax equivalent to the following rates: 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and 4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and 4-½% from January 1, 1990, and thereafter of the amount paid or charged for all services for repairs, renovations, cleaning, or washing of tangible personal property or for installation of tangible personal property rendered in connection with other tangible personal property.

(f) A tax equivalent to the following rates: 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and 4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and 4-½% from January 1, 1990, and thereafter of the amount paid or charged for tourist home, hotel, motel, or trailer court accommodations and services. This subsection shall not apply to the amount paid or charged for tourist home, motel, hotel, or trailer court where residency is maintained continuously under the terms of a lease or similar agreement for a period of not less than 30 days.

(g) A tax equivalent to the following rates: 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and 4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and 4-½% from January 1, 1990, and thereafter of the amount paid or charged for laundry and dry cleaning services.

(h) A tax equivalent to the following rates: 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and 4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and 4-½% from January 1, 1990, and thereafter of the amount paid or charged for leases and rentals of tangible personal property, when situs of the property is in this state, or if the lessee took possession in this state; provided, however, the tax need not be paid if the leased property is used exclusively in a foreign state.

The revenue collected from (i) a ⅛% increase in sales tax from July 1, 1983, through June 30, [~~1987~~] 1986, shall be deposited in the General Fund Restricted-Executive Reserve Account, and (ii) a 6/64% increase in sales tax from July 1, 1986, through December 31, 1989, shall be deposited in the Water Resources Conservation and Development Fund.

History: L. 1933, ch. 63, § 4; 1933 (2nd S.S.), ch. 20, § 1; 1937, ch. 111, § 1; C. 1943, 80-15-4; L. 1943, ch. 93, § 1; 1959, ch. 113, § 1; 1961, ch. 148, § 1; 1963, ch. 140, § 1; 1965, ch. 126, § 1; 1965, ch. 127, § 1; 1969, ch. 187, § 2; 1969 (1st S.S.), ch. 14, § 2; 1973, ch. 153, § 1; 1975, ch. 179, § 1; 1977, ch. 220, § 1; 1983, ch. 258, § 4; 1983, ch. 270, § 1; 1983 (1st S.S.), ch. 6, § 1; 1984, ch. 56, § 1; 1985, ch. 172, § 2.

Compiler's Notes.

The 1975 amendment deleted a sentence which read: "This subsection shall not apply to any coin-operated laundry and dry cleaning services" from the end of subsec. (e).

The 1977 amendment deleted "domestic or" before "commercial consumption" at the end of the first sentence of subsec (b)(2); added the second sentence of subsec. (b)(2); added subsec. (b)(3) relating to fuels; and made minor changes in phraseology.

The 1983 amendment by chapter 258, inserted provisions for a ⅛% increase in sales tax from July 1, 1983, through June 30, 1987; and added the final paragraph.

The 1983 amendment by chapter 270, inserted the exemption on the sale of currency and coinage and on gold, silver, and platinum ingots, bars, medallions and coins in subsec. (a).

The 1983 (1st S.S.) amendment added ½% to the sales tax rates herein for the period beginning October 1, 1983, and ending September 30, 1984.

The 1984 amendment added ½% to the sales tax rates herein beginning October 1, 1984.

Effective Date.

Section 2 of Laws 1977, ch. 220 provided: "This act shall take effect July 1, 1977."

Cross-References.

County or municipal sales and use tax, provisions of ordinance, 11-9-4, 11-9-6.

Dental materials purchased by practitioners.

Dentists were obligated to pay the tax imposed by this chapter on materials they purchased for use in dental work; they were "users" of the products on the sale of which the tax was sought to be imposed, and as between the dentists and their patients, the tax commission could properly choose to assess the dentists. Hardy v. State Tax Comm. (1977) 561 P 2d 1064, following Utah Concrete Products Corp. v. State Tax Comm. (1942) 101 U 513, 125 P 2d 408.

Rare and foreign coins.

Rare United States coins, foreign coins and precious metals are subject to state sales tax as "tangible personal property" where they are transferred as a commodity, and not as part of a money transaction. Thorne & Wilson, Inc. v. Utah State Tax Comm. (1984) 681 P 2d 1237.

59-15-5. Collection of tax — Out-of-state vendors — Remission — Returns — Direct payment by purchaser of motor vehicle — Tokens — Deposit of security and sale thereof — Remission of excess amount collected — Penalties and interest for violations — Fine or imprisonment. (1) [~~Every~~] Each person receiving any payment or consideration upon a sale of property or service subject to the tax under this [~~act~~] chapter, or to whom such payment or consideration is payable (hereinafter called the vendor) is responsible for the collection of the amount of the tax imposed on [~~said~~] that sale. The vendor is not required to maintain a separate account for the tax collected, but is deemed to be a person charged with receipt, safekeeping, and transfer of public moneys.

(2) [~~Where~~] If any sale of tangible personal property is made by a wholesaler to a retailer, upon the representation by the retailer that the personal property is purchased by the [~~said~~] retailer for resale, and the [~~said~~] personal property thereafter is not resold, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale, but the retailer is solely liable for the tax[~~; and provided, further, that where~~]. If any sale of property or service subject to the tax is made to a person prepaying sales tax in accordance with the Resource Development Act, or to a contractor or subcontractor of [~~such~~] that person, the vendor to whom such payment or consideration is payable, upon the representation by the person prepaying the sales tax that the amount prepaid as sales tax has not been fully credited against sales tax due and payable under the rules [~~and regulations~~] promulgated by the State Tax Commission is not responsible for the collection or payment of the sales tax but the person prepaying the sales tax is solely liable for such payment, if any.

(3) [~~A~~] Each vendor [~~is required to~~] shall pay or collect and remit the tax imposed by this [~~act~~] chapter if within this state the vendor directly or by any agent or other representatives: (a) has or utilizes an office, distribution house, sales house, warehouse, service enterprise, or other place of business; (b) maintains a stock of goods; (c) regularly solicits orders whether or not such orders are accepted in this state, unless the activity in this state consists solely of advertising or of solicitation by direct mail; (d) regularly engages in the delivery of property in this state other than by common carrier or U.S. mail; (e) regularly engages in any activity in connection with the leasing or servicing of property located within this state. This state does not seek to impose use tax collection requirements on any retailer over whom the above standard does not confer jurisdiction in this state.

(4) [~~The~~] Each vendor shall collect the tax from the vendee, but [~~in no case shall he~~] the vendor may not collect as tax an amount (without regard to fractional parts of one cent) in excess of the tax computed at the rates prescribed by this [~~act, provided, however, that on~~] chapter. On all motor vehicle sales made by other than a regular licensed dealer the tax [~~is~~] shall be paid by the purchaser directly to the State Tax Commission upon every sale of a motor vehicle subject to registration and licensing under the laws of this state, and [~~is~~] shall be collected by the State Tax Commission at the time of such registration and licensing. Except as provided in Section 59-15-5.1, the tax imposed by this [~~act~~] chapter is due and payable to the State Tax Commission quarterly on or before the [~~thirtieth~~] last day of the month next succeeding each calendar quarterly period[~~, the first of such quarterly periods being the period commencing with the first day of January, 1953~~]. [~~Every~~] Each vendor shall on or before the [~~thirtieth~~] last day of the month next succeeding each calendar quarterly period, file with the commission a return for the preceding quarterly period. The return shall be accompanied by a remittance of the amount of tax [~~herein~~] required under this chapter to be collected by the vendor for the period covered by the return. The tax as computed in the return shall in all cases be based upon the total sales made during the period including both cash and charge sales. Credit is allowed to the vendor for prepaid taxes and for taxes paid on sales represented by that portion of an account determined to be worthless and actually charged off for income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract. [~~Such~~] These returns shall contain the information and be made in the manner as the State Tax Commission may by [~~regulation~~] rule prescribe. The State Tax Commission may extend the time for making returns and paying the taxes collected under [~~such~~] rules [~~and regulations as~~] it may prescribe, but no [~~such~~] extension [~~shall~~] may be for more than [~~ninety~~] 90 days. The State Tax Commission, if it deems it necessary in order to ensure the payment of the tax imposed by this [~~act~~] chapter, may require returns and payment of the tax to be made for other than quarterly periods.

(5) If the accounting methods regularly employed by the vendor in the transaction of his business are such that reports of sales made during a calendar month will impose unnecessary hardships, the State Tax Commission may accept reports at [~~such~~] intervals [~~as~~] that will, in its opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.

(6) For the purpose of more efficiently securing the payment, collection, and accounting for the taxes provided for under this [~~act~~] chapter, the State Tax Commission [~~in its discretion,~~] may by proper rules [~~and regulations, shall~~] provide for the issuance of tokens or other appropriate devices to facilitate collections[~~; provided, no~~]. No tax or token [~~is~~] may be collected on lunches or dinners served by schools, churches, or charitable institutions.

(7) The State Tax Commission, whenever it deems it necessary to ensure compliance with the [~~provisions of~~] this [~~act~~] chapter, may require any person, subject to the tax imposed [~~hereunder~~] under this chapter, to deposit with it [~~such~~] security as determined by the State Tax Commission [~~shall determine~~]. The [~~same~~] security may be sold by the State Tax Commission at public sale if it becomes necessary so to do in order to recover any tax, interest, or penalty due. Notice of such sale may be served upon the person who deposited [~~such~~] the securities personally or by mail[~~; if~~]. If notice is by mail, notice sent to the last known address as [~~the same~~] it appears in the records of the State Tax Commission is sufficient for the purposes of this requirement. Upon such sale the surplus, if any, above the amounts due under this [~~act~~] chapter, shall be returned to the person who deposited the security.

(8) If any vendor [~~shall~~], during any reporting period, [~~collect~~] collects as a tax an amount in excess of the lawful state and local percentage of total taxable sales, he shall remit to the commission the full amount of the tax [~~herein~~] imposed under this chapter and also [~~such~~] any excess.

(9) It is unlawful for a vendor with the intent to evade any tax to fail to timely remit the full amount of tax required by [~~the provisions of~~] this chapter. A violation of this section is punishable as follows:

(a) if the amount not remitted is less than $1,000, by a fine not exceeding $1,000 or imprisonment not exceeding six months or by both fine and imprisonment;

(b) if the amount not remitted is $1,000 or more, but less than $10,000, by a fine not exceeding $5,000 or imprisonment not exceeding six months or by both fine and imprisonment;

(c) if the amount not remitted is $10,000 or more, but less than $50,000, by a fine not exceeding $10,000 or imprisonment not exceeding one year or by both fine and imprisonment;

(d) if the amount not remitted is $50,000 or more, by a fine not exceeding $25,000 or imprisonment not exceeding five years or both fine and imprisonment.

(10) For the purposes of prosecution under Section 59-15-9 each quarterly tax period defined in Section 59-15-4 in which a vendor collects a tax, and with intent to evade any tax fails to timely remit the full amount of the tax required to be remitted, [~~shall constitute~~] constitutes a separate offense.

(11) Any person failing to pay any tax to the state or any amount of tax [~~herein~~] required to be paid to the state within the time required by this [~~act~~] chapter, or file any return as required by this [~~act~~] chapter, shall pay, in addition to the tax, penalties and interest as provided in Section 59-15-8.

(12) The statute of limitations for prosecution of a violation of this section is six years from the date when the tax should have been remitted.

History: L. 1933, ch. 63, § 5; 1933 (2nd S.S.), ch. 20, § 1; 1937, ch. 111, § 1; 1937, ch. 112, § 1; 1939, ch. 103, § 1, C. 1943, 80-15-5, L. 1947, ch. 118, § 1; 1949, ch. 83, § 1; 1953, ch. 113, § 1; 1975, ch. 181, § 1; 1981, ch. 240, § 1; 1983, ch. 266, § 4; 1984, ch. 64, § 1, 1985, ch. 111, § 2.

Compiler's Notes

The 1975 amendment added the proviso to present subsec (2) relating to sales or service to a person prepaying sales tax in accordance with the Resource Development Act and made a minor change in phraseology

The 1981 amendment inserted present subsec (3)

The 1983 amendment added the second sentence to subsec (1) substituted 'the lawful state and local percentage of total taxable sales for two per cent of his total taxable sales' in subsec (8) deleted provisions declaring the retention of excess collections or failure to remit amounts required unlawful and imposing a fine not exceeding $1 000 or imprisonment not exceeding six months or both in subsec (8) inserted subsecs (9) and (10), and made minor changes in phraseology, punctuation and style

The 1984 amendment inserted Except as provided in Section 59 15 51 in the second sentence of subsec (4) inserted for prepaid taxes and in the sixth sentence of subsec (4) and made minor changes in style

59-15-5.1. Prepayment of sales and use taxes — Return — Penalty. (1) Except as provided in Subsection (2) any person whose tax liability under Title 59, Chapters 15 and 16, and Title 11 Chapter 9 was (a) $96 000 for the previous year, (b) $24 000 for the previous quarter, or (c) whose estimated tax liability is $8 000 or more per month, as determined by the State Tax Commission shall prepay not less than 90% of the amount of state and local tax liability for April and May of each year The State Tax Commission shall establish by rule and regulation the procedures and guidelines in determining the tax liability under this section

(2) The prepayment shall be accompanied by a return showing the amount of the prepayment in the form and manner determined by the State Tax Commission The prepayments shall be made to the State Tax Commission on or before the 15th of June each year, beginning June 15 1984

(3) The amount of the prepayment shall be a credit against the amount of the taxes due and payable for the quarterly period in which the payment became due In addition to any other penalties for late payment provided in Section 59 15 5 there shall be a penalty of 10% of the total amount of the prepayment due from the date the prepayment return is due

History: C 1953, 59 15 5 1, enacted by L 1984 ch 64 § 2

Title of Act.

An act relating to revenue and taxation providing for a year end prepayment of state and local sales and use taxes providing for dollar limits on sales and use tax to trigger the prepayment requirement providing filing dates and penalties for late payments and providing an effective date

This act amends Sections 59 15 5 and 59 16 7 Utah Code Annotated 1953 as last amended by Chapter 266 Laws of Utah 1983 and enacts Sections 59 15 51 and 59 16 71 Utah Code Annotated 1953 — Laws 1984 ch 64

59-15-6. Exempt sales. (1) (a) There are exempted from the taxes imposed by this [~~act~~] chapter the gross receipts from [~~the following sales transactions~~] [~~(1) All~~] (i) all sales of motor fuels and special fuels upon which an excise tax is imposed (ii) all sales to the United States government, (iii) all sales to the state [~~of Utah~~], its departments, [~~and~~] institutions, and political subdivisions, (iv) all sales of food, beverage, and dairy products, including candy, gum, and similar confections dispensed from vending machines in which the proceeds of each sale do not exceed one dollar if the vendor or operator of the vending machine reports an amount equal to 120% of the cost of such items as goods consumed, (v) all sales of food, beverage, dairy products, similar confections, and related services to commercial airline carriers for in flight consumption, (vi) all sales of parts and equipment installed in aircraft used primarily in scheduled interstate or foreign commerce, (vii) all sales of "commercials," "motion picture films," "prerecorded audio program tapes or records," and "video tapes," by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster, (viii) all sales made through coin operated laundry machines, coin operated

dry cleaning machines, or coin-operated car washes, (ix) all sales made to or by religious or charitable institutions in the conduct of the regular religious or charitable functions and activities, (x) all sales of vehicles of a type required to be registered under the [~~provisions of the~~] motor vehicle laws of this state which are made to bona fide nonresidents of this state and are not thereafter registered or used in this state except as necessary to transport them to the borders of this state (xi) all sales of medicine as defined [~~herein~~] in this section (xii) all property materials, or services used in the construction or incorporated in pollution control facilities allowed by Sections [~~26-24-19~~] 26 13-26 through [~~26-24-26~~] 26 13 30 and (xiii) all sales which the state [~~of Utah~~] is prohibited from taxing under the Constitution or laws of the United States or of [~~the state of~~] Utah

(b) Any person, firm, or corporation subject to the tax imposed by this [~~act~~] chapter who, pursuant to a binding, written contract with a definite amount executed prior to July 15 1983, the terms of which or performance [~~thereunder~~] under which prevented delivery of tangible personal property or services upon tangible personal property before October 1 1983 after paying the tax prescribed [~~herein~~] in this chapter, may apply to the State Tax Commission for a refund of the additional ½% imposed [~~herein~~] by this chapter, upon a showing of payment of the 4 ⅛% tax and [~~such~~] other circumstances [~~as~~] which would justify a refund

(2) (a) As used in this section, 'medicine' means insulin syringes and insulin medicine prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist or supplied to patients by a physician, surgeon or podiatrist[~~it also~~] 'Medicine' includes (i) any medicine dispensed to patients in a county or other licensed hospital if prescribed for [~~such~~] that patient and dispensed by a registered pharmacist or administered under the direction of a physician[~~,~~], and [~~also~~] (ii) any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic

(b) "Medicine" does not include (i) any auditory prosthetic ophthalmic or ocular device or appliance, [~~nor~~] or (ii) any alcoholic beverage

(3) [~~(a) Sales~~] The gross receipts from sales of tangible personal property used or consumed primarily and directly in farming operations are exempted from the taxes imposed by this chapter This exemption does not include (a) machinery equipment, materials and supplies used in a manner that is incidental to farming, such as maintenance and janitorial equipment and supplies and hand tools with a unit purchase price not in excess of $100[~~; nor does it include~~], (b) tangible personal property used in any activities other than actual farming operations such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research or in transportation,[~~: nor does this exemption include vehicles~~] or (c) any vehicle required to be licensed by the laws of this state without regard to the use to which [~~such vehicles are~~] the vehicle is put

[~~(b) The exemption from the sales tax on tangible personal property allowed by this subsection shall be phased in as follows:~~]

[~~(i) one percent of the purchase price on July 1, 1979;~~]

[~~(ii) two percent of the purchase price on July 1, 1980;~~]

[~~(iii) three percent of the purchase price on July 1, 1981; and~~]

[~~(iv) total exemption on July 1, 1982.~~]

(4) [~~All~~] There are exempted from the taxes imposed by this chapter the gross receipts from all sales or leases of materials, machinery, equipment and services of any person in excess of [~~$500 thousand~~] $500,000 for any tax year used in the new construction, expansion, or modernization (excluding normal operating replacements as determined by the State Tax Commission) of any mine mill reduction works, smelter, refinery (except oil and gas refineries [~~are not included~~]) synthetic fuel processing and upgrading plant, rolling mill, coal washing plant or melting facility in Utah commencing after July 1, 1984 and ending June 30 1989

The State Tax Commission shall by rule implement and administer [~~the provisions of~~] this subsection.

(5) There are exempted from the taxes imposed by this chapter the gross receipts from all sales or leases of machinery and equipment purchased or leased by a manufacturer for use in new or expanding operations (excluding normal operating replacements as determined by the State Tax Commission) in any manufacturing facility in Utah. Normal operating replacements shall include replacement machinery and equipment which increases plant production or capacity. Manufacturing facility means an establishment described in SIC Codes 2000 to 3999 of the Standard Industrial Classification Manual 1972, of the federal Executive Office of the President, Office of Management and Budget. For purposes of this subsection, the State Tax Commission shall by rule define "new or expanding operations" and "establishment."

History: L. 1933, ch. 63, § 6; 1933 (2nd S.S.), ch. 20, § 1; 1939, ch. 103, § 1; C. 1943, 80-15-6; L. 1945, ch. 110, § 1; 1957, ch. 126, § 1; 1957, ch. 127, § 1; 1965, ch. 128, § 1; 1967, ch. 162, § 1; 1969, ch. 187, § 3; 1969 (1st S.S.), ch. 11, § 3; 1973, ch. 42, § 9; 1973, ch. 154, § 1; 1975, ch. 179, § 2; 1976, ch. 28, § 1; 1979, ch. 195, § 1; 1981, ch. 238, § 1; 1981, ch. 239, § 2; 1982, ch. 70, § 1; 1983, ch. 264, § 1; 1983, ch. 281, § 1; 1983 (1st S.S.), ch. 6, § 2; 1984, ch. 59, § 1, 1984, ch. 60, § 1; 1985, ch. 80, § 3.

Compiler's Notes.

The 1975 amendment inserted "all sales made through coin-operated laundry machines, coin-operated dry cleaning machines or coin-operated car washes" near the middle of present subsec. (1).

The 1976 amendment designated the former section as subsec. (1); inserted "There are exempted from the taxes imposed by this act the gross receipts from the following sales transactions" at the beginning of the section; inserted "all sales of medicine as defined herein" near the end of the exemptions in subsec. (1); deleted "shall be exempt from taxation under this act" from the end of subsec. (1); and added subsec. (2).

The 1979 amendment added subsec. (3); and made a minor change in style.

The 1981 amendment by chapter 238 deleted "the medicine is" after "licensed hospital" in subsec. (2)(a); and added "and also any oxygen or stoma supplies prescribed by a physician or administered under the direction of a physician or paramedic" to subsec. (2)(a).

The 1981 amendment by chapter 239 inserted the provision for exemption of motion picture films from the sales and use tax in subsec. (1).

The 1982 amendment inserted "dispensed" in the first paragraph of subsec. (1); and substituted "exceed one dollar if the vendor or operator of the vending machine reports an amount equal to 120% of the cost of such items as goods consumed" in the first paragraph of subsec. (1) for "exceed fifteen cents."

The 1983 amendment by chapter 264 inserted the provision for exemption of program tapes or records sold to commercial radio broadcasters.

The 1983 amendment by chapter 281 inserted the exemption for sale of food and beverage to commercial airlines for inflight consumption.

The 1983 (1st S.S.) amendment, in the second paragraph of subsec. (1), substituted "July 15, 1983" for "April 1, 1969" substituted "October 1, 1983" for "April 1, 1969", substituted "1.5%" for "1%", and substituted "4 1/8%" for "4%."

The 1984 amendment by chapter 59 added subsec. (4).

The 1984 amendment by chapter 60 inserted "all sales of parts and equipment installed in aircraft used primarily in scheduled interstate or foreign commerce" in the first paragraph of subsec. (1).

Effective Date.

Section 2 of Laws 1979, ch. 195 provided: "This act shall take effect July 1, 1979."

Section 3 of Laws 1984, ch. 59 provided: "This act shall take effect July 1, 1984."

Section 3 of Laws 1984, ch. 60 provided: "This act shall take effect July 1, 1984."

Activities of charitable institution.

Tennis foundation chartered as a nonprofit corporation was not liable to pay sales tax on the proceeds from the sale of tickets to a tennis tournament it sponsored, notwithstanding fact that receipts exceeded expenses, and that the foundation engaged in other "business" activities, namely the loaning out of money at interest, the purchase of tennis equipment wholesale to resell to schools at some markup though still below retail, and the charging of admission at other tennis tournaments, because considered as a whole, the foundation's activities were consistent with its stated charitable purposes. Youth Tennis Foundation v. Tax Comm. (1976) 554 P.2d 220.

Indians.

Sales by Indian commercial enterprise on trust lands to non-Indians are subject to the sales tax. Ute Indian Tribe v. State Tax Comm. (1978) 574 F.2d 1007.

Sales made on nontrust lands by Indian tribe to Indians only are not within state's taxing power. Ute Indian Tribe v. State Tax Comm. (1978) 574 F.2d 1007.

59-15-8. Overpayments and deficiencies. As soon as practicable after the return is filed, the tax commission shall examine it; if it then appears that the correct amount of tax to be remitted is greater or less than that shown on the return to be due, the tax shall be recomputed. If the amount paid exceeds that which is due, the excess, together with interest thereon at the rate prescribed in section 59-11-16 from the date of overpayment, shall be credited or refunded to the person paying it, upon written application; if it is determined that the overpayment was not made for the purpose of investment.

If the commission determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the commission shall certify to the state auditor the amount collected in excess of what was legally due, from whom it was collected or by whom paid to the commission, and the amount of interest computed thereon, and if approved by the state auditor, it shall be credited on any amounts then due from that person to the state of Utah under this act or under any other taxing act, the administration of which is vested in the commission and the balance shall be refunded to that person or his successors, administrators, executors or assigns, but no such credit or refund shall be allowed unless a claim is filed with the state tax commission within three years from date of overpayment.

In the event any amount has been illegally determined to be due from any person, the commission shall authorize the cancellation of the amounts upon its records.

If the amount paid is less than the amount due, interest at the rate prescribed in section 59-11-16 shall be added to the difference due computed from the time the return was due.

If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added the greater of $50 or ten per cent of the total amount of the deficiency and interest at the rate prescribed in section 59-11-16 to the amount of the deficiency from the time the return was due.

If any part of the deficiency is due to fraud with the intent to evade, there shall be added the greater of $100 or one hundred per cent of the total amount of the deficiency and interest at the rate prescribed in section 59-11-16 to the amount of the deficiency from the date the return was due.

The deficiencies in tax, together with penalties and interest imposed by this section, shall be due and payable by the taxpayer within ten days after notice and demand by the tax commission; except that when the commission determines that a greater amount was due than was shown on the return, and the tax is not deemed to be in jeopardy, the additional tax, penalty and interest shall be due and payable within thirty days after the commission mailed its report of deficiency determination.

Except in the case where a deficiency is due to fraud with intent to evade tax or of a failure to file a return, the amount of taxes imposed by this chapter shall be assessed within three years after the return was filed and if not so assessed no proceeding for the collection of the taxes shall be begun after the expiration of the period.

In the case of a false or fraudulent return or payment with intent to evade tax or of failure to file a return, the tax may be assessed or a proceeding for the collection of the tax may be begun without assessment at any time.

Upon making a record of its reasons, the commission shall have the power, in its discretion, to waive, reduce or compromise any of the civil penalties or interest provided in this chapter.

History: L. 1933, ch. 63, § 8; 1939, ch 103, § 1; C. 1943, 80-15-8; L. 1967, ch. 163, § 1, 1969 (1st S.S.), ch. 14, § 4; 1977, ch. 219, § 19; 1980, ch. 69, § 25, 1983, ch. 266, § 5; 1983, ch. 275, § 1.

Compiler's Notes.

The 1977 amendment substituted "two-thirds" for "one-half" in the fourth paragraph.

The 1980 amendment substituted "rate prescribed in section 59-11-16" for "rate of one-half of one per cent per month" in the first paragraph; substituted "interest at the rate prescribed in section 59-11-16 shall be added to the difference due computed" for "to the difference shall be added interest thereon at the rate of two-thirds of one per cent per month" in the fourth paragraph; substituted "rate prescribed in section 59-11-16 to" for "rate of one per cent per month on" in the fifth and sixth paragraphs; and made minor changes in phraseology.

This section was amended twice in the 1983 Session, once by chapter 266 and once by chapter 275. Neither act referred to the other. The section is printed incorporating the changes made by both amendments.

The 1983 amendment by chapter 266 inserted "civil" in the last paragraph.

The 1983 amendment by chapter 275 inserted "the greater of $50 or" in the fifth paragraph; and inserted "the greater of $100 or" in the sixth paragraph

Cross-References.

Natural resource development, prepayment of taxes, credit, 63-51-3, 63-51-7 to 63-51-9

Tire studs, fees and returns, penalties for violations, 41-6-150.

59-15-12. Objection to assessment — Petition. If any person, having made a return and paid the tax provided by this act, feels aggrieved by the assessment made upon him by the tax commission, he may apply to the tax commission by petition in writing, within thirty days after the notice is mailed to him, as provided in Chapter 30, Title 59.

History: L. 1933, ch. 62, § 12; C. 1943, 80-15-12; L. 1969 (1st S.S.), ch. 14, § 5; 1983, ch. 283, § 6.

Compiler's Notes.

The 1983 amendment substituted "as provided in Chapter 30, Title 59" for "for a hearing and a correction of the amount of the tax so assessed"; and deleted three sentences at the end of the section. For prior version, see parent volume.

59-15-13. Repealed.

Repeal.

Section 59-15-13 (L. 1933, ch. 63, § 13; C. 1943, 80-15-13; L. 1977, ch. 80, § 15), relating to decisions of the commission, was repealed by Laws 1983, ch. 283, § 10.

59-15-14, 59-15-15. Repealed.

Repeal.

Sections 59-15-14, 59-15-15 (L. 1933, ch. 63, §§ 14, 15; C. 1943, 80-15-14, 80-15-15), relating to review of decisions of the tax commission by the Supreme Court, were repealed by Laws 1977, ch. 80, § 29.

59-15-16. Repealed.

Repeal.

Section 59-15-16 (L. 1933, ch. 63, § 16, C. 1943, 80-15-16; L. 1977, ch. 80, § 16), relating to conditions precedent to review by the tax division of the district court, was repealed by Laws 1983, ch. 283, § 10.

59-15-19. Refusal to make or falsifying returns — Penalties. It shall be unlawful for any vendor to refuse to make any return provided to be made in this chapter or to make any false or fraudulent return or false statement on any return or to evade the payment of the tax, or any part thereof imposed by this chapter or for any person to aid or abet another in any attempt to evade the payment of the tax or any part imposed by this chapter. Any person violating any of the provisions of this chapter, except as provided in section 59-15-5(9) shall be guilty of a misdemeanor. In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement is guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law. Any company making a false return or a return containing a false statement as aforesaid, is guilty of a misdemeanor.

History: L. 1933, ch. 63, § 19; 1939, ch. 103, § 1, C. 1943, 80-15-19; L. 1983, ch. 266, § 6.

Compiler's Notes.

The 1983 amendment substituted "chapter" for "act" throughout the section; inserted "except as provided in section 59-15-5(9)" in the second sentence; and made minor changes in phraseology.

59-15-21. Revenue credited to state general fund.

Cross-References.

Prepaid sales and use tax construction account, 63-51-4.

CHAPTER 16

USE TAX

Section

59-16-2. Definitions.

Cross-References.

County sales and use tax, definition applicable to, 11-9-6.

"Use."

Where "demonstrator" autos were retained by the dealership on a special demonstrator account, removal of vehicles from the general inventory kept for sale, putting them into use as test and courtesy vehicles for prospective customers and as transportation for the wife of the dealership's owner, was not tantamount to a taxable "sale" of the vehicles, since they were all still held for ultimate sale to customers, and their use prior to such sale was primarily for demonstration and display in the regular course of business. Merrill Bean Chevrolet, Inc. v. State Tax Comm. (1976) 549 P 2d 443.

59-16-3. Use tax — Rate — Disposition of revenue from temporary increase. There is levied and imposed an excise tax on:

(a) The storage, use, or other consumption in this state of tangible personal property purchased for storage, use, or other consumption in this state at the rate of: (i) 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and~~] (ii) [~~4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and (iii) 4-½% from January 1, 1990, and thereafter of the sales price of such property.

(b) The services for repairs or renovation of tangible personal property or for installation of tangible personal property rendered in connection with other tangible personal property at the rate of: (i) 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and~~] (ii) [~~4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and (iii) 4-½% from January 1, 1990, and thereafter of the amount charged and paid for such services; if the retailer was called to this state, or if the property was sent to a retailer in another state, expressly for the purpose of performing such services.

(c) The lease or rental of tangible personal property stored, used, or otherwise consumed in this state at the rate of: (i) 4-⅝% from October 1, 1983, through June 30, [~~1987~~] 1986, [~~and~~] (ii) [~~4-½%~~] 4-38/64% from July 1, [~~1987~~] 1986, through December 31, 1989, and (iii) 4-½% from January 1, 1990, and thereafter of the amount charged and paid for such rentals.

Every person storing, using, or otherwise consuming in this state tangible personal property purchased, serviced, leased, or rented, shall be liable for the tax imposed by this act, and the liability shall not be extinguished until the tax has been paid to this state.

The revenue collected from a ⅛% increase in use tax from July 1, 1983, through June 30, [~~1987~~] 1986, shall be deposited in the General Fund Restricted-Executive Reserve Account, and a 6/64% increase in sales tax from July 1, 1986, through December 31, 1989, shall be deposited in the Water Resources Conservation and Development Fund.

History: L. 1937, ch. 114, § 3; C. 1943, 80-16-3; L. 1961, ch. 148, § 2; 1965, ch. 129, § 1; 1969, ch. 187, § 4; 1969 (1st S.S.), ch. 14, § 7; 1983, ch. 258, § 5; 1983 (1st S.S.), ch. 6, § 3; 1984, ch. 56, § 2; 1985, ch. 172, § 3.

The 1984 amendment increased tax rates from 4 ⅛% to 4 ⅝% for the period from October 1, 1984, to June 30, 1987, and from 4% to 4 ½% thereafter; and made a minor change in phraseology.

Compiler's Notes.

The 1983 amendment increased tax rates from 4% to 4 ⅛% from July 1, 1983, through June 30, 1987; and added the last paragraph.

The 1983 (1st S.S.) amendment increased the rates from 4 ⅛% to 4 ⅝% from October 1, 1983, through September 30, 1984.

Effective Date.

Section 6 of Laws 1983, ch. 258 provided: "This act shall take effect July 1, 1983."

Cross-References.

County or municipal sales and use tax, provisions of ordinance, 11-9-4, 11-9-6.

59-16-4. Exemptions. The storage, use, or other consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this [~~act~~] chapter:

(a) property, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by Chapter 15, Title 59, and any amendments made or which may be made [~~thereto.~~] to that chapter;

(b) property, the storage, use, or other consumption of which this state is prohibited from taxing under the Constitution or laws of the United States [~~of America~~] or of this state; property stored in the state of Utah for resale[-];

(c) property brought into the state by a nonresident for his or her own personal use or enjoyment while within the state[~~. Except, this exemption does not apply to~~], except property purchased for use in Utah by a nonresident living and working in Utah at the time of purchase[-];

(d) property, the gross receipts from the sale, distribution, or use of which are now subject to a sale or excise tax under the laws of this state[-];

(e) property stored, used, or consumed by the United States government or the state [~~of Utah~~], and their departments, institutions, and political subdivisions[-];

(f) property purchased for resale in this state, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of business, and for the purposes of this [~~act~~] chapter, poultry, dairy, and other livestock feed, and [~~the~~] its components [~~thereof~~], including all baling ties and twine used in the baling of hay and straw, and all seeds or seedlings, which are deemed to become component parts of the eggs, milk, meat, and other livestock products, plants, and plant products produced for resale[~~; and~~], but each purchase of [~~such~~] feed or seed [~~shall be~~] is exempt from taxation under this [~~act.~~] chapter;

(g) property which enters into and becomes an ingredient or component part of the property which a person engaged in the business of manufacturing, compounding for sale, profit, or use manufactures or compounds, or the container, label, shipping case, or, in the case of meat or meat products, [~~the~~] its casing [~~thereof~~], [~~notwithstanding that~~] whether or not the casing, be it natural or artificial, is removed prior to shipment by [~~said~~] the person[~~; provided, however, that~~], but only if its removal [~~thereof~~] is for the convenience of the ultimate consumer, [~~and said~~] the casing is not reusable, and its use was necessary to the manufacturing or compounding of [~~said~~] the property[-];

(h) property upon which a sales or use tax was paid to some other state, or one of its subdivisions, or the United States[~~; provided~~], except that the state [~~of Utah~~] shall be paid any difference between [~~such~~] the tax paid and the tax imposed by this [~~act~~] chapter and Chapter 9, Title 11, the Uniform Local Sales and Use Tax Law of Utah, [~~except that~~] and no adjustment [~~shall be~~] is allowed if the tax paid was greater than the tax imposed by this [~~act~~] chapter and Chapter 9, Title 11, the Uniform Local Sales and Use Tax Law of Utah[-];

(i) property, materials, or services used in the construction or incorporated in pollution control facilities as allowed by Sections [~~26-24-19~~] 26-13-26 through [~~26-24-26.~~] 26-13-30;

(j) parts and equipment installed in aircraft used primarily in scheduled interstate or foreign commerce[-];

(k) any person, firm, or corporation subject to the tax imposed by this [~~act~~] chapter who, pursuant to a binding, written contract with a definite amount executed prior to July 15, 1983, the terms of which or performance [~~thereunder~~] under which prevented delivery of tangible personal property or services upon tangible personal property before October 1, 1983, after paying the tax prescribed [~~herein~~] in this chapter, may apply to the State Tax Commission for a refund of the additional ½% imposed [~~herein~~] by this chapter, upon a showing of payment of the 4-⅛% tax and [~~such~~] other circumstances [~~as~~] which would justify a refund[-];

(l) all materials, machinery, equipment, and services of any person in excess of [~~$500 thousand~~] $500,000 for any tax year used in the new construction, expansion, or modernization (excluding normal operating replacements as determined by the State Tax Commission) of any mine, mill, reduction works, smelter, refinery (except oil and gas refineries [~~are not included~~]), synthetic fuel processing and upgrading plant, rolling mill, coal washing plant, or melting facility in Utah commencing after July 1, 1984, and ending June 30, 1989[~~. The tax commission shall by rule implement and administer the provisions of this subsection.~~]; and

(m) all sales or leases of machinery and equipment purchased or leased by a manufacturer for use in new or expanding operations (excluding normal operating replacements as determined by the State Tax Commission) in any manufacturing facility in Utah. Normal operating replacements shall include replacement machinery and equipment which increases plant production or capacity. Manufacturing facility means an establishment described in SIC Codes 2000 to 3999 of the Standard Industrial Classification Manual 1972, of the federal Executive Office of the President, Office of Management and Budget. For purposes of this subsection, the

State Tax Commission shall by rule define "new or expanding operations" and "establishment."

History: L. 1937, ch. 114, § 4; C. 1943, 80-16-4, L. 1963, ch. 140, § 1; 1967, ch. 162, § 2; 1969 (1st S.S.), ch. 14, § 8; 1973, ch. 42, § 10; 1983, ch. 279, § 1; 1983 (1st S.S.), ch. 6, § 4; 1984, ch. 59, § 2; 1984, ch. 60, § 2; 1985, ch. 80, § 4.

Compiler's Notes.

The 1983 amendment added the second sentence in subsec. (c); and made a minor change in phraseology.

The 1983 (1st S.S.) amendment, in present subsec. (k), substituted "July 15, 1983" for "April 1, 1969"; substituted "October 1, 1983" for "April 1, 1969"; substituted "½%" for "1%"; and substituted "4 ½%" for "4%."

The 1984 amendment by chapter 59 added subsec. (l).

The 1984 amendment by chapter 60 inserted subsec. (j); and redesignated the following subsection.

Effective Date.

Section 5 of Laws 1983 (1st S.S.), ch. 6 provided: "This act shall take effect October 1, 1983."

Section 3 of Laws 1984, ch. 59 provided: "This act shall take effect July 1, 1984."

Section 3 of Laws 1984, ch. 60 provided: "This act shall take effect July 1, 1984."

Section 5 of Laws 1985, ch. 80 provided: "This act takes effect July 1, 1985."

59-16-6. Collection of tax. Every retailer making sales of tangible personal property for storage, use or other consumption in this state not exempted under the provisions of section 59-16-4, is responsible for the collection of the tax imposed by this act from the purchaser, but in no case shall he collect as tax an amount (without regard to fractional parts of one cent) in excess of the tax computed at the rate prescribed by this act. The retailer is not required to maintain a separate account for the tax collected, but is deemed to be a person charged with the receipt, safekeeping, and transfer of public moneys. Where any sale of tangible personal property for storage, use or other consumption is made to a person prepaying use tax in accordance with the Resource Development Act, or to a contractor or subcontractor of such person, the retailer or any other person to whom payment or consideration is payable on account of such sale, upon the representation by the person prepaying the use tax, that the amount prepaid as use tax has not been fully credited against use tax due and payable under the rules and regulations promulgated by the tax commission, is not responsible for the collection or payment of the use tax but the person prepaying the use tax is solely liable for such payment, if any.

The retailer shall give the purchaser a receipt for the tax so collected. This provision may be satisfied by the retailer billing the tax as a separate item and declaring the name of this state and his use tax registration number on his invoice for the sale. The receipt shall be prima facie evidence that the retailer has collected the tax and shall relieve the purchaser of the liability for reporting the tax to the state as a consumer.

History: L. 1937, ch. 114, § 6; C. 1943, 80-16-6; L. 1969 (1st S.S.), ch. 14, § 9; L. 1975, ch. 182, § 1; 1983, ch. 266, § 7.

Compiler's Notes.

The 1975 amendment inserted the present third sentence in the first paragraph relating to persons prepaying use tax in accordance with the Resource Development Act.

The 1983 amendment inserted the second sentence of the first paragraph; deleted a third paragraph which read: "The tax required to be collected by the retailer shall constitute a debt owed by the retailer to this state"; and made minor changes in phraseology and punctuation.

Cross-References.

Entity created for interlocal cooperation subject to state sales and use tax, 11-13-26.

59-16-7. Returns — Payments — Revenue stamps or tokens — Credit for worthless accounts and prepayments — Evasion of tax — Exemption certificates. (1) Except as provided in Section 59-16-7.1, the tax imposed by this [~~act~~]

chapter is due and payable to the commission quarterly, on or before the [~~thirtieth~~] last day of the month next succeeding each calendar quarterly period[~~; the first of such quarterly periods being the period commencing with the first day of January, 1953~~]. [~~Every~~] Each taxpayer shall, on or before the [~~thirtieth~~] last day of the month next succeeding each calendar quarterly period, [~~said first quarterly period ending on the thirtieth day of March, 1953.~~] file with the commission a return for the preceding quarterly period in [~~such~~] a form and containing [~~such~~] information [~~as may be~~] prescribed by the commission. The return shall be accompanied by a remittance of the amount of tax [~~herein~~] required to be collected or paid under this chapter by the taxpayer during the period covered by the return. The commission may extend the time for making returns and paying the taxes collected or due under [~~such~~] rules [~~and regulations as~~] it may prescribe, but no such extension [~~shall~~] may be for more than [~~ninety~~] 90 days.

(2) If the accounting methods regularly employed by the taxpayer in the transaction of his business are such that reports of sales or purchases made during a calendar quarterly period will impose unnecessary hardships, the commission may accept reports at such intervals as will in its opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.

(3) For the purposes of more efficiently securing the payment, collection, and accounting for the taxes provided for under this [~~act~~] chapter, the commission may, by proper rules [~~and regulations~~], provide for the issuance, affixing, and payment of revenue stamps or tokens. In such case, [~~the provisions of~~] the law relating to the use and misuse of cigarette stamps, in so far as [~~the same may be~~] it is applicable, [~~are~~] is extended to and made a part of this [~~act~~] chapter.

(4) The tax as computed in the return shall in all cases be based upon the total amount of purchases for storage, use, or other consumption in this state made during the period, including both by cash and by charge. Credit shall be allowed for prepaid taxes and for taxes paid on that part of an account determined to be worthless and actually charged off for income tax purposes or on the part of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract. If any retailer, during any reporting period, collects as a tax an amount in excess of the tax computed at the rates prescribed by this [~~act~~] chapter he shall remit to the commission the full amount of the tax imposed and also any excess.

(5) It is unlawful for a retailer, with the intent to evade any tax, to fail to timely remit to the State Tax Commission the full amount of tax required by [~~the provisions of~~] this chapter. A violation of this section is punishable as follows:

(a) if the amount not remitted is less than $1,000, by a fine not exceeding $1,000 or imprisonment not exceeding six months or by both fine and imprisonment;

(b) if the amount not remitted is $1,000 or more, but less than $10,000, by a fine not exceeding $5,000 or imprisonment not exceeding six months or by both fine and imprisonment;

(c) if the amount not remitted is $10,000 or more, but less than $50,000, by a fine not exceeding $10,000 or imprisonment not exceeding one year or by both fine and imprisonment;

(d) if the amount not remitted is $50,000 or more, by a fine not exceeding $25,000 or imprisonment not exceeding five years or both fine and imprisonment.

(6) For the purposes of prosecution under this section each quarterly tax period in which the retailer collects a tax and, with intent to evade any tax[;] fails to timely remit the full amount of the tax required to be remitted, [~~shall constitute~~] constitutes a separate offense.

(7) Any person failing to pay any tax to the state or any amount of tax required by this chapter to be paid to the state within the time required by this chapter, shall pay, in addition to the tax, penalties, and interest as provided in Section 59-16-9.

(8) The statute of limitations for prosecution of a violation of this section is six years from the date when the tax should have been remitted

(9) For the purpose of the proper administration of this chapter and to prevent evasion of the tax and the duty to collect the tax it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage use, or other consumption in this state unless the person selling such property [~~shall have~~] has taken from the purchaser an exemption certificate signed by and bearing the name and address of the purchaser to the effect that the property was exempted within the provisions of Section 59 16 4 The exemption certificates shall contain information as prescribed by the commission

History L 1937 ch 114 §7 C 1943 80 16 7 L 1953 ch 116 §1 1969 (1st S S) ch 14 §10 1983 ch 266 §8 1984 ch 64 § 3 1985 ch 111 § 3

Compiler's Notes

The 1983 amendment deleted provisions declaring the retention of excess collections and the failure to make required remissions unlawful and authorizing a fine not to exceed $1 000 or imprisonment not to exceed six months or both as punishment therefor inserted subsecs (5) through (8) substituted chapter for act in subsec (9) and made minor changes in phraseology and style

The 1984 amendment inserted Except as provided in Section 59 16 7 1 in the first sentence of subsec (1) and inserted for pre paid taxes and in the second sentence of subsec (4)

Effective Date

Section 4 of Laws 1985 ch 111 provided 'This act takes effect on July 1 1985

59-16-7.1. Prepayment of sales and use taxes — Return — Penalty (1) Except as provided in Subsection (2) any person whose tax liability under Title 59 Chapters 15 and 16, and Title 11 Chapter 9 was (a) $96 000 for the previous year, (b) $24 000 for the previous quarter or (c) whose estimated tax liability is $8 000 or more per month as determined by the State Tax Commission shall pre pay not less than 90% of the amount of the state and local tax liability for April and May of each year The State Tax Commission shall establish by rule and regu lation the procedures and guidelines in determining the tax liability under this sec tion

(2) The prepayment shall be accompanied by a return showing the amount of the prepayment in the form and manner determined by the State Tax Commission The prepayments shall be made to the State Tax Commission on or before the 15th day of June each year, beginning June 15, 1984

(3) The amount of the prepayment shall be a credit against the amount of the taxes due and payable for the quarterly period in which the payment became due In addition to any other penalties for late payment provided in Section 59 15 5 there shall be a penalty of 10% of the total amount of the prepayment due from the date the prepayment return is due

History C 1953 59 16 7 1 enacted by L 1984 ch 64 § 4

Effective Date

Section 5 of Laws 1984 ch 64 provided 'This act shall take effect April 1 1984

59-16-9. Deficiencies — Penalty. If the commission, at any time within three years after any return is filed, except in cases of intent to defraud, is not satisfied with the return and payment of the amount of tax herein required to be paid to the state by any person, it may examine the return and recompute and determine the amount required to be paid based upon the facts contained in the return or upon any informaton within its possession or that shall come into its possession All amounts determined to be due under the provisions of this section shall bear interest at the rate prescribed in section 59 11 16 from the time the return was due If any part of the deficiency for which a determination of an additional

amount due is made is due to negligence or intentional disregard of the act or authorized rules and regulations but without intent to defraud a penalty of ten per cent of such amount shall be added plus interest at the rate prescribed in sec tion 59 11 16 from the time the return was due If any person not holding a sales tax license under the provisions of section 59 15 3 or a valid use tax registration certificate shall make a purchase of tangible personal property for storage use or other consumption in this state and fail to file a return or pay the tax due within 170 days from the time the return is due this person shall pay a 25% penalty plus interest at the rate prescribed in section 59 11 16 and all other penalties and inter est as provided by this title If any part of the deficiency for which a determination of an additional amount is made is due to fraud or an intent to evade the act or authorized rules and regulations a penalty of one hundred per cent of such amount shall be added plus interest at the rate of one per cent per month or at the rate prescribed in section 59 11 16 if it is higher than 12% per annum from the time the return was due The commission shall give to the retailer or person storing, using or consuming tangible personal property written notice of its determination by mail postpaid and the deficiency plus penalties and interest is due and payable ten days after notice and demand except that when the commission finds a greater tax is due than was shown on the return and the tax is not deemed to be in jeop ardy the additional tax penalty and interest is due and payable within thirty days after the commission mails the report of deficiency determination Upon making a record of its reasons the commission shall have the power in its discretion to waive reduce or compromise any of the civil penalties or interest provided in this chapter

History L 1937 ch 114 §9 (1943 80 16 9 L 1969 (1st S S) ch 14 § 11 1973 ch 196 § 1 1977 ch 219 § 20 1980 ch 69 § 26 1983 ch 266 §)

Compiler s Notes

The 1977 amendment substituted two thirds for one half in the middle of the second sentence of the first paragraph and substituted eight per cent for 6% near end of the fourth sentence of the first para graph

The 1980 amendment substituted rate prescribed in section 59 11 16 for rate of two thirds of one per cent per month in the second sentence substituted rate prescribed in section 59 11 16 for rate of one per cent per month in the third sentence substituted interest at the rate prescribed in section 59 11 16 for eight per cent annual interest in the fourth sentence and inserted or at the rate prescribed in section 59 11 16 if it is higher than 12% per annum in the fifth sentence

The 1983 amendment inserted civil in the last sentence and made minor changes in phraseology

59-16-11 Petition for redetermination. Any person from whom an amount is determined to be due under the provisions of section 59 16 9 or 59 16 10 may peti tion the commission in writing within thirty days after the notice is mailed to him as provided in Chapter 30 Title 59

History L 1937 ch 114 §11 C 1943 80 16 11 L 1969 (1st S S) ch 14 §12 1977 ch 80 § 17 1983 ch 283 § 7

Compiler s Notes

The 1977 amendment substituted unless an appeal is taken within that time to the tax division of the appropriate district court in which case the order or decision shall become final in accordance with the law gov erning proceedings therein at the end of the section for unless proceedings are taken within that time for review by the Supreme Court upon a writ of certiorari or review as herein provided in which case it shall become final (1) when affirmed or modified by the judgment of the Supreme Court (2) if the Supreme Court remands the case to the commission for rehearing when it is thereaf ter determined in accordance with the direc tions of the Supreme Court with respect to the initial proceeding The procedure pro vided shall be deemed an exclusive procedure to review reverse or annul any decision of the commission and no court of this state except the Supreme Court shall have juris diction to suspend or delay the operation or execution of the commission s decision

The 1983 amendment rewrote this section which read: "Any person from whom an amount is determined to be due under the provisions of section 59-16-9 or 59-16-10 may petition the commission in writing for a hearing or redetermination within thirty days after the notice is mailed to him, setting forth the reasons why a hearing should be granted. If a petition for a hearing or redetermination is not filed within said thirty-day period, the amount determined to be due becomes final, and the person shall be deemed and treated as waiving and abandoning any rights to question the amount determined to be due. If a petition for a hearing or redetermination is filed within said thirty-day period, the commission shall notify the petitioner of the time and place fixed by it for hearing or redetermination.

"The order or decision of the commission upon a petition for a hearing or redetermination shall be in writing and a duly certified copy mailed to the petitioner within ten days. All orders or decisions shall become final thirty days after notice thereof shall have been mailed the petitioner unless an appeal is taken within that time to the tax division of the appropriate district court in which case the order or decision shall become final in accordance with the law governing proceedings therein."

59-16-12. Repealed.

Repeal.

Section 59-16-12 (L. 1937, ch. 114, § 12; C. 1943, 80-16-12), relating to review of decisions of the tax commission by the Supreme Court, was repealed by Laws 1977, ch. 80, § 29.

59-16-13. Repealed.

Repeal.

Section 59-16-13 (L. 1937, ch. 114, § 13; C. 1943, 80-16-13; L. 1977, ch. 80, § 18), relating to conditions precedent to review by the tax division of the district court, was repealed by Laws 1983, ch. 283, § 10.

59-16-14. Refunds. If the commission determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the amount shall be refunded or credited, together with interest at the rate prescribed in section 59-11-16 from the date of overpayment, upon written application, provided it is determined that the original overpayment was not intentionally made for purposes of investment. The commission shall certify to the state auditor the amount collected in excess of what was legally due, from whom it was collected, or by whom it was collected, or by whom paid to the commission, and the amount of interest computed thereon, and, if approved by the state auditor, the same shall be credited on any amounts then due from such person to the state of Utah under this act or under any other taxing act, the administration of which is vested in the commission, and the balance shall be refunded to such person, or his successors, administrators, executors or assigns, but no such credit or refund shall be allowed after three years from the date of overpayment.

If any amount has been illegally determined to be due from any person the commission shall authorize the cancellation of the amounts upon its records.

History: L. 1937, ch. 114, § 14; C. 1943, 80-16-14; L. 1967, ch. 163, § 2; 1969 (1st S.S.), ch. 14, § 13; 1977, ch. 219, § 21; 1980, ch. 69, § 27.

Compiler's Notes.

The 1977 amendment substituted "two-thirds" for "one-half" in the middle of the first sentence.

The 1980 amendment substituted "rate prescribed in section 59-11-16" for "rate two-thirds of one per cent per month" in the first sentence of the first paragraph.

Cross-References.

Natural resource development, prepayment of taxes, credit, 63-51-3, 63-51-7 to 63-51-9.

59-16-15. Collection of tax by warrant. In any case in which any amount required to be paid to the state, in accordance with the provisions of this act, is

not paid when due and if the person liable for the payment of the amount has not regularly followed the procedure outlined in sections 59-16-11, and 59-16-13, hereof, the commission may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of a delinquent taxpayer found within his county for the payment of the amount due thereof, with the added penalties, interest and costs, and to return such warrant to the commission and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty days from the date of the warrant. Immediately upon receipt of said warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in his county, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant, and in appropriate columns the amount of tax, penalties, interest and costs for which the warrant is issued and the date when such duplicate is filed, and thereupon the amount of such warrant so docketed shall have the force and effect of an execution against all personal property of the delinquent taxpayer, and shall also become a lien upon the real property of the delinquent taxpayer in the same manner and to the same extent as a judgment duly rendered by any district court and docketed in the office of the clerk thereof. The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner as is prescribed by law in respect to execution issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

History: L. 1937, ch. 114, § 15; C. 1943, 80-16-15; L. 1977, ch. 80, § 19.

Compiler's Notes.

The 1977 amendment deleted "59-16-12" after "59-16-11" near the beginning of the section.

59-16-25. Revenues credited to general fund.

Cross-References.

Prepaid sales and use tax construction account, 63-51-4.

CHAPTER 17

GROSS RECEIPTS TAX ACT

Section
- 59-17-1. Name of act.
- 59-17-2. Purpose of act.
- 59-17-3. Definitions.
- 59-17-4. Rate of tax — Change of rate.
- 59-17-5. Time for filing of return.
- 59-17-6. Rule-making authority.

59-17-1. Name of act. This chapter shall be known and may be cited as the "Utah Gross Receipts Tax Act."

History: C. 1953, 59-17-1, enacted by L. 1980, ch. 67, § 1.

Title of Act.

An act relating to revenue and taxation; providing for the imposition of a gross receipts tax upon certain corporations on a graduated basis; establishing the rate of taxation and procedures in respect to it; and providing an effective date.

This act enacts Sections 59-17-1 through 59-17-6, Utah Code Annotated 1953. — Laws 1980, ch. 67.

S57. Ice (Applies to sales and use taxes).

a. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns or the like to be placed in drinks consumed by customers at the place of business are deemed sales for resale and are not taxable.

b. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services will be allowed unless the exempt services are shown as a separate item on the sales invoice.

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S58. Materials and supplies sold to owners, contractors and repairmen of real property (Applies to sales and use taxes).

a. Tangible personal property sold to real property contractors and repairmen of real property is generally subject to tax. The person who converts the personal property into real property is considered to be the consumer of the personal property since he is the last one to own it as personal property. The contractor or repairman is deemed to be the consumer of tangible personal property used to improve, alter or repair real property regardless of the type of contract entered into, whether it is a lump sum, time and material or a cost-plus contract. The sale of real property is not subject to the tax nor is labor performed on real property subject to the tax. To give an example, the sale of a completed home or building is not subject to the tax, but the sale of materials and supplies to contractors and subcontractors are taxable transactions as sales to final consumers. This is true whether the contract is performed for an individual, a religious institution or governmental instrumentality. Sales of material to religious or charitable institutions and government agencies are exempt only if sold as tangible personal property and the seller is not required to install the material as an improvement to realty or use it to repair real property.

b. If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless he also makes direct sales of tangible personal property in addition to his work on real property. If direct sales are made, the contractor is required to obtain a sales tax license and must collect tax on all sales of tangible personal property to final consumers and must accrue and report tax on all merchandise bought tax-free and used in performing contracts to improve or repair real property.

Books and records must be kept to account for both material sold and material consumed.

c. Sales of materials and supplies to contractors for use in out-of-state jobs are taxable unless sold in interstate commerce in accordance with regulation S44.

d. This regulation does not apply to contracts whereby the retailer sells and installs personal property which does not become part of the real property. See regulations S51, S59, and S78 for information dealing with installation and repair of tangible personal property.

S59. Sales of materials and services to repairmen (Applies to sales and use taxes).

Tangible personal property and services purchased by persons engaged in repairing or renovating tangible personal property are purchased for resale provided the tangible personal property or service becomes a component part of the repair or renovation and is resold. For example, paint purchased by a body and fender shop and used in repairing and painting an automobile is exempt from sales tax since it becomes a component part of the repair work. Sandpaper, masking tape and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items should be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax-free as set forth in regulation S23 and sales tax reported by the repairman on his sales tax return covering the period during which consumption takes place.

Footnote: As amended May 1, 1973, effective June 1, 1973 to make general revisions and add examples.

S60. Machinery, fixtures and supplies sold to manufacturers, businessmen and others (Applies to sales and use taxes).

Sales of machinery, tools and other equipment to a manufacturer, producer or contractor and sales of furniture, fixtures, supplies, stationery, equipment, appliances, tools and instruments to stores, shops, businesses, establishments, offices and professional people for use in carrying on their business or professional activities are taxable. Such sales are to the final buyers or ultimate consumers and are not sales for resale.